THE PRESENT POSITION OF THE CHURCH OF SCOTLAND EXPLAINED AND VINDICATED.

BY

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FIFTH EDITION,

WITH EXTENSIVE ALTERATIONS AND ADDITIONS, ADAPTED TO THE PRESENT STATE OF THE DISCUSSION.

"No sentiment has been so deeply impressed upon the minds of "your committee, in the course of their long and laborious in- "vestigation, as that of veneration and respect for the Esta- "blished Church of Scotland."—*Report of Com. of H. of Commons on Patronage*, 1834.

EDINBURGH:

BELL & BRADFUTE, 12. BANK STREET;

J. NISBET & CO. LONDON.

MDCCCXL.

NOTE TO THE SECOND EDITION.

THE first edition of this Pamphlet was published several months before the appearance of the Dean of Faculty's "Letter "to the Lord Chancellor." That elaborate and very able work, humbly appears to me, to distort the whole subject of controversy to an extent that I should have thought absolutely impossible. Unquestionably, it is written, throughout, in the spirit and tone of a Counsel, or Party, in a private cause;—which is far from the temper of mind, with which it befits either the duty or the interest of the country, to regard the proceedings of its Established Church. The Treatise of the learned Dean has called forth very full and able answers; but, as all may not have leisure to peruse them,—I venture to hope, that even the brief view of the subject, exhibited in the following pages, may recommend itself to the judgment of many, as that which is, substantially, accordant with truth.

J. H.

Edinburgh, 28th December 1839.

TO HIS GRACE

THE DUKE OF WELLINGTON,

&c. &c. &c.

My Lord Duke,

The subject of the following imperfect Observations involves the vital interests of Scotland, and, I believe, of the United Empire. I solicit the attention of your Grace to them;—under the conviction that,—happily for the country at the present day,—your Grace's judgment, in every matter of public importance, commands more profound and general respect than that of any other individual.

I have the honour to remain,

With unfeigned respect,

My Lord Duke,

Your Grace's most obedient humble Servant,

J. HAMILTON.

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THE PRESENT POSITION

OF THE

CHURCH OF SCOTLAND,

&c.

THE position which the Church of Scotland now occupies, in relation to the law of lay patronage and the civil courts, has exposed her, in some quarters, to severe condemnation. The Church, however, has assumed her present position—advisedly,—under a solemn sense of what she owes to the country, not less than to herself, and under a deep conviction that the course which she has followed is the *only* course consistent with the public welfare.

It so happens, however, that the considerations which justify the conduct of the Church, in this matter, involve a knowledge of subjects to which the attention of very few has ever been even cursorily directed; and thus the conduct of the Church is condemned, because the reasons which dictated that conduct are unknown. But while the Church alone is the subject of this too hasty condemnation, it may be well to remember that the vital interests of society and of the country are deeply involved in the issue; and hence it will appear how much it is the duty of every man deliberately to consider whether the Church ought now to be permitted to sink under a groundless condemnation, or whether she ought not to be promptly rescued from her perils by a decisive declaration of support.

In this view it has been thought that a material service may be rendered to many, by explaining,—in as simple and succinct a way as possible,—some of the leading grounds which have influenced the recent conduct of the Church; and however imperfect the present attempt may prove, it can scarcely fail so signally as not to show that, on grounds both of sound principle and of enlightened policy, the Church has wisely adapted her measures to the exigencies of the times, and that, by these measures, so far from having forfeited, she has only strengthened, her just claims upon the respect and attachment of the country.

The circumstances which have placed the Church in her present position are briefly these:

The law of lay patronage having, at all times exercised an important influence on the history of the Church of Scotland, the attention of the Church was anew forcibly drawn to it so long ago as the year 1832. Even before that period an agitation had commenced within the Church itself, for a total abolition of the rights of patrons; and the enemies of the Church from without were already preparing for a deadly assault against the very existence of the Establishment,—the weapon on which they mainly relied for success being furnished to them by the existence of patronage in the Church. The advantage which the existence of patronage furnished to the enemies of the Church, arose from the fact that, since the very foundation of the Presbyterian Church in Scotland, the subject of lay patronage had been ready, upon every favourable occasion, to agitate the popular mind more intensely than any other subject that can be mentioned; while that the subject had not yet lost any of its power to sway the public feelings, was manifested by the fact that the number of petitions addressed to the Legislature had already induced

the House of Commons to grant a committee of inquiry,—which prosecuted a lengthened and most laborious investigation into the whole subject, and the *overtures* (proposals for a change of the law) laid on the table of the General Assembly, by the Presbyteries and Provincial Synods of the Church, had been rapidly increasing, in number and urgency, for three successive years.

In such circumstances it was impossible for the Church to avoid the subject; and having a view, therefore, at once to the permanent peace and efficiency of the Church within its own pale, and to its security as the Established Church of the country, many of its sincere and intelligent friends,—while they, on every ground, strongly deprecated the total abolition of patronage,—became convinced of the propriety and necessity of introducing some measure, by which the uncontrolled exercise and the abuses of that right might be restrained. According to the law and immemorial practice of the Church, *the call*, or concurrence of the people, had at all times been held an indispensable preliminary, without which the Church could not competently proceed to take steps towards the ordination of any individual to the holy ministry *. In modern practice the Church had allowed the *call* to degenerate very much into matter of form; but *the form* having been all along rigorously adhered to, the remedy now required seemed obviously to consist in reviving this part of the ecclesiastical procedure, according to its true spirit and import, so that it might operate as a check upon the abuses of the patron's power. It was thought most unadvisable to apply to the Legislature, if the object could be otherwise effected; but doubts having been expressed how

* For the solemn terms of *the Call*, as employed in the procedure of the Church of Scotland, see App. No. II.

far the required remedy, if applied by the authority of the Church alone, might not trench upon the civil rights of patrons, no step was taken without consulting the legal and political advisers of the Crown in Scotland; and, independently of being supported by other legal advice of very high authority, the measure ultimately adopted by the Church was introduced and carried through the Assembly, *with the full concurrence and sanction of these public functionaries.*

It is true that the Government then was (as it ever since has continued) in the hands of the *Whig* party; but every candid man,—of whatever party,—is *bound* to remember, *that the Church had not the choice of the Government*—(if the choice had rested with the Church, there might possibly have been a great difference,)—but being compelled, by strong and urgent reasons, to enter on the immediate consideration of a subject, equally important to the Church and to the country, the Church had no alternative but to deal with the *existing* Government *as she found it;*—and had the Government been in the hands of those whom she might herself have preferred, she would from them have expected, at such a juncture, no less a measure of friendly counsel and assistance than she actually received.

The matter, then, having formed the subject of deliberation and discussion in the General Assembly during the two previous years, and having been, in the meantime, fully canvassed throughout the country, the Assembly finally resumed consideration of it in the year 1834. Upon that occasion, the subject was brought before the House by *Lord Moncreiff*, an individual whose profound knowledge and judgment, in all matters of law, whether civil or ecclesiastical, are known to every man who knows Scotland, and whose deep interest in this particular subject, and cautious policy regarding it, are strongly evinced by the powerful testimony which he, that

same year, delivered *against the abolition of patronage*, before the Committee of the House of Commons.

His Lordship, after adverting to the proceedings in the previous Assemblies, and to the number of overtures now on the table of the House, stated in very solemn and emphatic terms,—that "he had not declined to undertake this motion; and we do propose this day, to make another effort (so far as any effort upon our part may, under the blessing of the Great Head of the Church, avail) to stem the force of excitement and agitation, which many of us think has been greatly increased by the rejection of this motion in two former Assemblies." The form in which it was now thought advisable to revive *the call*, was—not by requiring *the direct concurrence* of the people,—but by allowing those who *positively objected* to state their *dissent*, and then holding, that all not so dissenting were to be considered as effectually, though tacitly, concurring in the nomination. This method was taken, as being more favourable towards the patron and his presentee. The principle of the proposed measure, and its perfect legality, according to Lord Moncreiff's views, having therefore been again explained and vindicated by his Lordship and others,—the Assembly passed an enactment, which "declares that it is a fundamental law of this Church, that no pastor shall be intruded on any congregation contrary to the will of the people; and in order to carry this principle into full effect, the Presbyteries of the Church shall be instructed, that if, at the moderating in a call to a vacant pastoral charge, the major part of the male heads of families, members of the vacant congregation, and in full communion with the Church, shall disapprove of the person in whose favour the call is proposed to be moderated in, such disapproval shall be deemed sufficient ground for the Presbytery rejecting such person, and he shall be rejected accordingly."

By a standing law of the Church of Scotland, justly considered to embody in it one of the wisest provisions ever devised against rash and inconsiderate legislation, no new enactment becomes the law of the Church, by simply passing the General Assembly; but after having so passed this representative body, it must be transmitted to the whole Presbyteries of the Church, where it is submitted to the deliberate consideration of every individual office-bearer of the Church, acting in his own immediate sphere, and at a distance from the heats and disturbing influence of debate; and it is not till the proposed enactment has received the expressed sanction of a majority of the whole Presbyteries, that it is anew submitted to a subsequent General Assembly, and by it is either finally passed or rejected. In conformity, therefore, with the provision of this "*Barrier*" Act, the above law of 1834 (having been enacted by the Assembly for *one* year, the limit to which the power of the Assembly extends,) was transmitted to Presbyteries; and in the following year was found to have received the sanction of *forty-seven* Presbyteries, and to have been rejected by only *twenty-six*. The Assembly having thereupon again enacted it by a large majority, it thus became the permanent law of the Church, and has been acted upon throughout the country during the last five years.

This enactment, it will be observed in passing, consists of two parts distinct from each other; there being, *first*, a solemn declaration, that, by a fundamental law, or principle, of the Church, no pastor may be intruded upon a congregation contrary to the will of the people; and, *secondly*, an enactment of a *particular rule or order*, by which Presbyteries are instructed to proceed in the execution of this fundamental law, viz. by giving effect to the dissent of a majority of male heads of families.

Of the true import of the fundamental law or principle of the Church, declared by the *first* branch of this enactment, (*a matter which, up to the present moment, is totally misunderstood,*) as well as of the character and tendency of the law generally, something will be said by and by. In the meantime, it is to be observed that the proposal of this enactment, in the first instance, and its operation subsequently, had the speedy effect of allaying the agitation which had been raised within the Church for the abolition of patronage; while, in the *voluntary* warfare which has since been waged from without with such determined hostility, the champions of the Establishment found their strongest defence to consist in an appeal to this law, as evincing at once the power and the disposition of the Church to afford to its members a suitable remedy for every practical evil; and the assailants of the Church had no resource, but to hazard a sanguine prophecy, that the Church would yet find her attempted meliorations thwarted and baffled by the civil judicatories.

The hope of the Voluntaries has unfortunately been realised. Lord Kinnoul, the patron of the parish of Auchterarder, having presented Mr Young to that parish, and Mr Young having been rejected by the Presbytery, in conformity with the *veto* law, his Lordship and his presentee raised an action before the Court of Session, containing a variety of conclusions,—the leading and fundamental conclusion being based on the alleged illegality of the *veto* law, as being beyond the powers of the Church, and inconsistent with the statutes concerning patronage. After a lengthened litigation the Court, by a majority, pronounced a judgment, since affirmed on appeal, by which they disposed of this leading conclusion of the action; and while they "repelled the objections to "the jurisdiction of the Court," they found "that the said "Presbytery, in so doing (*i. e.* rejecting Mr Young under

" the *veto* law,) have acted to the hurt and prejudice of the " said pursuers, illegally and in violation of their duty, and " contrary to the provisions of certain statutes libelled on."

This fundamental conclusion of the summons, thus decided by the Court, was capable of being carried out into practical effect *in two different ways*, very distinct from each other. In the *first* place, it might have a bearing on the disposal *of the stipend and other civil fruits of the benefice;* and accordingly the summons contained ulterior conclusions, to the effect that either the patron or the presentee should have right to the whole civil fruits of the benefice, so long as the latter was not inducted to the parish. In regard to the summons, viewed in *this* aspect of it, the Presbytery of Auchterarder, —acknowledging, in the most unqualified manner, the undoubted and exclusive jurisdiction of the civil court to adjudicate finally upon every question that can possibly be raised as to the disposal of the civil fruits of a benefice,—had, as the legal guardians of the vacant benefice, appeared in the action, and endeavoured to satisfy the Court, (in conformity with the opinions which had guided the Church when it passed the *veto* law,) that, upon a full consideration of the whole statutes, as they, on the one hand, recognised the powers of the Church, and on the other, conferred upon patrons the right of patronage, it would appear that the right conferred upon patrons was *necessarily qualified* by the powers recognised as inherent in the Church; and that the rejection of Mr Young, therefore, under authority of the Church, being in truth warranted and supported by the statutes, when justly construed, *was legal*, and could form no ground for the patron or presentee obtaining the civil fruits of the benefice in the manner which was sought. But while, in regard to this branch of the action, the Presbytery thus appeared and submitted themselves, as ordinary litigants, to the Court,—

acknowledging without reserve that the judgment of the Court in regard to the civil fruits of the benefice must be final and conclusive against them and the whole world,—there was *another* aspect of the action, in regard to which the Presbytery appeared before the Court in a totally different attitude, and for a totally different purpose;—for, in so far as the conclusions of the summons pointed to *the duty* of the Presbytery, *as an ecclesiastical body, acting under the authority of the Church*, and to the circumstances in which the Church, through its Presbyteries, either ought or ought not *to introduce any of its members into the office of the holy ministry, and ordain him to a cure of souls*, the Presbytery respectfully, but most peremptorily, maintained that these were matters in which no civil judicature could have a right, or ought to have a wish, to intermeddle,—that they were matters at once beyond *the whole sphere and range* of every *civil* tribunal, and *necessarily and essentially peculiar* to the *ecclesiastical* or *spiritual* courts; and that as no Church on earth, deserving the name of *Christian*, *ever did* or *could* submit to be dictated to in such matters, it was least of all to be expected from the Church of Scotland, whose standards, eminently pure and scriptural, were inviolably ratified and secured to her by the most solemn acts of the State.

The above judgment of the Court of Session, though not in express terms, yet, by necessary consequence, decides the *first* of the above points, viz. that respecting the civil emoluments of the benefice, against the Church; and that decision, whether right or wrong, is *conclusive*. But from the sweeping and unqualified terms in which, by its judgment, the Court "*repelled the objections to its jurisdiction*," and pronounced general findings respecting "*the duty*" of the Presbytery and "*the illegality*" of its proceedings, there is no reason to doubt that the Court intended to decide, and *have* decided,

against the Church, the *second* of the above points also, viz. that respecting *the duty* of the Presbytery in the matter of *ordination;* and if the terms of the judgment, taken by themselves, had admitted of any dubiety, it has been entirely removed by the statement of the grounds and principles of the judgment, as these have been laid down and explained both here and in the House of Lords. So that the Presbyterian Church of Scotland, now, for the first time in its history, found itself judicially subjected to an invasion of its spiritual functions, such as even the Episcopal Church of England would not for one moment endure; and it was when placed in these circumstances, by the judgment of the supreme civil court, that the Church of Scotland was required to consider how it became her to act,—having respect to her own sacred rights, and to the interests of the country, to which she has so long been a distinguished blessing.

The affirmance by the House of Lords of the above judgment of the Court of Session was pronounced on the 3d of May last; and the short interval which elapsed between that date and the meeting of the General Assembly on the 16th of the same month, was employed by the friends of the Church in the most unremitting and anxious deliberations, prosecuted under a full impression of all those momentous interests which might be staked on the issue.

On the one hand, the General Assembly might propose to repeal the *veto* law, and hope that the Presbyteries would concur in rescinding what, by a majority of nearly two-thirds, they had so deliberately enacted. Nay, the General Assembly (as was actually proposed in a motion laid on its table) might at once have held the law of 1834 *pro non scripto*, and in defiance both of their own fundamental law, and of the *Barrier Act*, they might have proceeded to the ordination of Mr Young, and thus made the Church nothing more than

the ministerial organ for putting the judgment of the civil court into execution. By taking such a course, the Church would at once, and without farther trouble, have secured to its members the pecuniary emoluments of their office, and saved them from the damages, fines and imprisonment which awaited them, if, contrary to the mandate of the civil court, they dared either to perform, or not to perform, the most sacred and important function which belonged to them as ministers of the Gospel. These, no doubt, were matters for very serious reflection. But, on the other hand, the Church could not fail to see, that not only its own character and privileges, but its influence and utility, as one of the most important institutions of the country, were at stake in the present crisis; and these were objects which its public duty forbade it to sacrifice to any considerations respecting the personal profit and ease of its members. The reasons of urgent expediency and apparent necessity, which had dictated the passing of the *veto* law in 1834, not only remained still in full force, but had gained immeasurable strength, by the discussions regarding this very law which had agitated the minds of all classes, in the perilous conflict that had since been maintained with the enemies of the Establishment; and as these reasons had appeared in 1834 sufficiently strong to demand the passing of the law, they seemed now, in their increased strength, to present a barrier absolutely insuperable against the much mere delicate measure of repealing it. Then, how could the Church, after having, in 1834, with all the peculiar solemnities of its legislation, most deliberately declared and enacted it to be a *fundamental law* of this Church, "that no pastor shall be intruded on any congregation contrary to the will of the people,"—and after having it *judicially ascertained, in a form prescribed by itself*, that Mr Young was most obnoxious to the whole people of Auchterarder, now

proceed straightway to trample this, its own proclaimed *fundamental* law, under its feet, without manifestly, I should say, ostentatiously, abandoning its duty, as a Church of Christ, exposing its character to merited contempt, and suffering a fall from which it could never again expect to rise? By following such a course, the Church must have stood forth manifestly *self-condemned* before the whole world, —degraded in the esteem of its own members,—the butt and utter scorn of its formidable and ever-watchful foes. Could it possibly be for the interests of the country, that its Established Church should place itself in such a position as that? Whatever loss or inconvenience, therefore, the Church might incur by standing firm in the position which she had taken up, with an honest and sincere desire for the public good,—it thus appeared that these risks were infinitely less than the peril and irreparable damage to which the Establishment must be exposed, were she, in this critical juncture, to waver or recede from her position. And, while the line of conduct, which it was incumbent on the Church to pursue, seemed on these grounds to be sufficiently clear, her duty was placed beyond a doubt, by the fact, that the civil court had pronounced the most solemn judgment, not limited to civil matters, but embodying an encroachment, on the sacred functions of the ministry, such as the Church could not possibly yield to, without forfeiting every claim to the character of a Christian Church. The spiritual functions thus invaded, the Church conceived not only to be necessarily inherent in her as a Church, but to have been most clearly and solemnly guaranteed to her by the State. She conceived, therefore, that in making that encroachment the civil court had committed a manifest violation of *constitutional law;* and while, in regard to the civil fruits of her benefices, she acknowledged that she must look to the just consideration of

the Legislature for an enactment to provide that her ministers, while acting under her law, shall not in future be deprived of these,—in regard to her *spiritual privileges*, she confidently expected to receive immediate protection from what, as it is a most unwarranted, must also prove a most fatal *usurpation*.

Effect was given to these views in a motion submitted to the General Assembly by Dr Chalmers; and if there be any one thing rather than another by which that distinguished individual is pre-eminently distinguished, it is by his well-known and enlightened schemes of *practical philanthropy*; so that he is by no means so likely as some seem willing to suppose, to mistake the *practical interests* either of the country or of the Church,—both of which are equally dear to his heart, and of both of which he is himself the brightest ornament.

In this motion, no direct notice was taken of the encroachment committed by the civil court on the *spiritual functions* of the Church; because, as that encroachment had not as yet assumed the shape of any overt act, it seemed desirable that the Church should avoid the appearance of rushing too hastily to the vindication of her rights. Avoiding this matter, therefore, entirely, the motion, in the *first* place, explicitly acknowledged the competency of the judgment which had been pronounced by the civil court, *in reference to the civil fruits of the benefice* of Auchterarder, and expressed the acquiescence of the Assembly in that judgment, as being an authoritative and conclusive declaration of the law. It, *secondly*, pledged the Assembly, in express terms, to an adherence to the fundamental law of the Church against the intrusion of ministers; and then—contemplating that there must hence, in some instances, arise a severance of the fruits of the benefice from the pastoral charge of its parishes,—it appointed a select committee of the House to consider what might be done to

avoid such consequences, and, if necessary, to confer with Government on the subject. The motion was conceived in the following terms:

"The General Assembly having heard the report of the Procurator on the Auchterarder case, and considered the judgment of the House of Lords, affirming the decision of the Court of Session, and being satisfied that, by the said judgment, all questions of civil right, so far as the Presbytery of Auchterarder is concerned, are substantially decided, do now, in accordance with the uniform practice of this Church, and with the resolution of last General Assembly, ever to give and inculcate implicit obedience to the decisions of civil courts in regard to the civil rights and emoluments secured by law to the Church, instruct the said Presbytery to offer no farther resistance to the claims of Mr Young, or the patron, to the emoluments of the benefice of Auchterarder, and to refrain from claiming the *jus devolutum*, or any other civil right or privilege connected with the said benefice.

"And whereas the principle of non-intrusion is one coeval with the Reformed Kirk of Scotland, and forms an integral part of its constitution, embodied in its standards, and declared in various Acts of Assembly, the General Assembly resolve that this principle cannot be abandoned, and that no presentee shall be forced upon any parish contrary to the will of the congregation.

"And whereas, by the decision above referred to, it appears that when this principle is carried into effect in any parish, the legal provision for the sustentation of the ministry in that parish may be thereby suspended, the General Assembly being deeply impressed with the unhappy consequences which must arise from any collision between the civil and ecclesiastical authorities, and holding it to be their duty to use every means in their power, not involving any dereliction of the principles and fundamental laws of their constitution, to prevent such unfortunate results, do therefore appoint a committee for the purpose of considering in what way the privileges of the National Establishment, and the harmony between Church and State,

may remain unimpaired, with instructions to confer with the Government of the country, if they shall see cause."

This motion having been submitted to a very full House, the Assembly, after a lengthened debate, declared its sense in favour of the motion, by no weak or uncertain majority, the numbers having been 204 and 155,—the actual majority of 49 being equivalent,—taking into account the relative numbers of the two Houses,—to what a majority of 84 or 85 would be in a House of Commons of 616 * members. By a subsequent resolution of the Assembly, passed with a view to avoid all unseemly collision, the Presbyteries of the Church were instructed, in the event of any instance occurring during the ensuing year, of the operation of the *veto* law being challenged in the civil court, (no such instance had occurred during the previous year,) that, in that case, all procedure should be instantly suspended by the Presbytery until the meeting of the next General Assembly in May 1840.

Upon this motion I only farther observe, at present,—what, however, it is *most material* to notice,—that while it distinctly pledged the Assembly *to adhere to the fundamental "principle"* of the Church against the intrusion of ministers,—it *neither defined* what the Church *considered to be the precise import* of that fundamental principle, nor did it pledge the House to adhere *to the particular mode of giving effect* to that principle by the *veto* of the majority of the heads of families,—but reserved it entirely open to the Church hereafter, both to explain the true meaning of her fundamental principle, and to modify or alter the method of its practical execution, as she might yet be advised.

Such, then, is the position in which the Church of Scot-

* This is the number which voted at the last election of a Speaker.

land presently stands in relation to the law of lay patronage and the civil court. The civil court having determined that the existing law of the Church is inconsistent with the existing civil law, and having thereupon indicated ulterior proceedings, directed, *First*, against the legal provision for the maintenance of the clergy; and, *Secondly*, against the exercise of the most sacred function of the holy ministry,—the Church has solemnly declared that, under existing circumstances, she finds herself necessitated, by her sense of religious, and of public duty, to abide by her fundamental principle, respecting non-intrusion—however much, or however little, that may import; and—having, in the meantime, deferentially suspended all proceedings that may conflict with the actings of the civil court, and declared her readiness to enter into conference, with a view to explain her fundamental principle, and arrange its practical operation in the most advantageous and salutary form,—she waits with anxious expectation to know,—whether the Legislature and the country will afford her a candid hearing, and whether it is considered that, as the Established Church of the country, acting in trying circumstances and in trying times, she is now entitled to a continuance of the public countenance and encouragement or not?

Were the National Church of Scotland one which, either from its constitution or its history, could be considered as in any respect *alien* to the country whose name it bears,—ignorant of the character, or indifferent to the interests of the people of Scotland,—it might not be unreasonable that its measures should be watched with jealousy, and judged with severity. But when it is considered that the highest office-bearers in the Church of Scotland,—upon whom the Church itself has imposed by far the most complete course of academic education that is required of any professional body in the kingdom,—are at the same time pre-eminently distinguished

by devotion to their parochial duties, that they mix familiarly with all classes in the community, and thus become thoroughly conversant with their sentiments and wants; when with *such* a clergy there is combined, in all the courts and assemblies of the Church, a body of men who, though ordained to the gratuitous ecclesiastical office of the eldership, are yet, in every thing that regards their pursuits and connections, *laymen*, taken from all the respectable classes of society *, who, bringing with them their secular habits, and knowledge of business, are united with the clergy, in the General Assembly, in the proportion of *five* to *six*, and through all the inferior courts of the Church in a still larger proportion;—when it is considered, moreover, how much the sympathies and best interests of the people of Scotland have at all periods been associated with the prosperity of their Church,—that the history of Scotland, in its most important eras, is in fact *identified with the Church's history*,—that to the Church the country owes its civil liberties, and both the organisation and maintenance of that system of moral, religious and secular education which has formed the character of its people, and made the name of *Scotchman* an honourable distinction throughout the civilised world,—that, in more recent times, when the Church, from causes I shall yet have occasion to advert to, had lost, in some measure, its hold upon the country, and when, from the position of political parties, it could not obtain from the State the means necessary for its extension, it did itself stir up its own inherent and undiminished

* Of the thirteen Judges now composing the Court of Session, no fewer than six were long in the habit of taking an active share in the deliberations of the Assembly, while several others of them were, for many years, the leading counsel employed at the bar of the House.

energies, called forth, in the space of five years, contributions to the amount of L.260,000, built upwards of 200 new churches, and, besides proceeding in that cause with unabated zeal, is now multiplying schools with its churches, and raising the standard, and perfecting the system of national education ;—when it is considered, I say, that *such* is the Church whose solemn, and anxiously weighed measure, is now in question,—that it is the very men, possessed of peculiar advantages for ascertaining the practical wants of the country, and engaged, too, at this critical juncture, in extending, and thereby securing and perpetuating, the most important of our social institutions, who tell us that, according to their strong and unhesitating conviction, a reasonable but effective restriction upon lay patronage, introduced by the Legislature and the Church, in conjunction, (since the powers of the Church fall short of the object,) forms, at the present day, an indispensable means towards the success of all their patriotic exertions,—surely they may look for a candid consideration of their proceeding, and may expect that their honest design for the public good shall not be rashly thwarted, or impatiently overborne.

The question, how far some well-weighed measure, in relation to the appointment of her ministers, adopted or resolved upon by the Church, should not be accompanied or followed by a corresponding enactment of the Legislature, in relation to the civil right of patronage and the benefices of the Church, is the only question connected with this entire subject which is now of any practical moment; and were my present task limited to simply disabusing the public mind of the monstrous misconceptions which still prevail, in regard to the demand or proposal actually advanced by the Church in this matter, and to evincing the sound, practical and irresist-

ible reasons which call for the hearty concurrence and co-operation of the Legislature in the views of the Church, it would be comparatively a short and easy task.

But, most unfortunately for the interests of the Church and of the country at the present moment, the attention of the public has been almost entirely withdrawn from this, the only practical view of the question, and has been engrossed by an intemperate discussion respecting the principles of the connection between Church and State;—a discussion which has now, alas! resulted in a practical collision, of the most painful character.

This collision has arisen from the opposite and incompatible views taken up by the civil court and the Church, in regard to the place assigned to the Church in the constitution of the country. The Court of Session holds absolutely,—that the true fundamental principle of the whole matter is, that the Church of Scotland, as an *Established* Church, is *the mere creature of statute;* from whence it is held to follow, that all her powers and privileges flow to her from acts of Parliament, and must be exercised under subjection to the authority and jurisdiction of the civil court;—so as that, in every instance where the Church does not implicitly submit to the decisions of the Court of Session, (*whatever these decisions may embrace,*) she is setting herself in defiance against the law of the land, and usurping to herself a domination more intolerable than that of Papal Rome. From obvious causes, these dogmas have obtained a currency and a reception throughout the country, that have deeply prejudiced the minds, and poisoned the whole feelings, of multitudes against the recent proceedings of the Church,—absolutely precluding them from candidly considering the merits of what she has done, and of what she now requires for her security. On this ground, but certainly upon no other, it becomes indispensable, that

before considering the reasonableness of the measure now proposed by the Church, I should offer some observations, by way of explaining—what to the present hour most people are profoundly ignorant of, viz. the views actually entertained by the Church of Scotland in regard to the subject of her Civil Establishment, and the bearing which these views have on the recent proceedings, both of the Court of Session and of the Church itself;—and, unless I greatly deceive myself, a few plain observations may suffice to open up an entirely new aspect of the subject to the minds of many, and to demonstrate that the error which has been committed, in regard to this matter, has *not* been committed *by the Church*.

The object that will be kept in view, in the following observations, will be to bring out distinctly,—that the question between the civil court and the Church *necessarily divides itself into two distinct branches*, quite separate from each other; —the *first* having reference to *the temporalities, or civil emoluments*, of the Church;—as to which I shall show that the proceedings of the Church have, in every respect, been correct and unimpeachable;—and the *second* having reference to *the spiritual functions and internal policy* of the Church;— as to which I hope to make it not less manifest, that the proceedings *of the Court of Session have been entirely unconstitutional*, and such as the Church *is bound*, by every consideration, constitutional as well as religious, *to withstand to the utmost*. After I shall have thus, as I hope satisfactorily, justified the attitude now assumed by the Church, in relation to the civil court,—and enlisted the judgment and the sympathies of the country on her side, in her present very painful circumstances,—I shall, in conclusion, explain briefly the nature of the practical measure she now solicits from the Legislature, and show the reasonableness and necessity of what she asks.

In turning their attention to the great constitutional question, respecting the nature of the connection between Church and State, many persons have been very naturally misled, by applying to it the rules of the ordinary civil law—with which alone they are familiar, and in which no materials are to be found for explaining or vindicating the proceedings of the Church. But, if such persons will only attend to *the great constitutional peculiarity* which marks the *status* of the Church, and distinguishes it *from every other institution in the country*, they will find that their whole views, in relation to the subject, must necessarily be reversed. This peculiarity will be immediately apparent.

And here, in the commencement, it may conduce to clearness, if I state at once, in a few general propositions, what are the views entertained by the Church of Scotland respecting her connection with the State, and the consequences of that connection in so far as involved in the recent proceedings. —Her views are these:—The Church holds that *the whole* of her *spiritual* powers and privileges are derived to her *solely* from the Lord Jesus Christ, and are founded *exclusively* on the authority of the sacred Scriptures:—She holds that *the whole* of her *civil* rights and immunities, (as well as the whole of the personal and private rights belonging to her individual members, in common with the rest of their fellow subjects,) are derived to her *exclusively* from the Legislature, or supreme power in the State; and that one and all of these *civil* rights and privileges, conferred upon her by the State, are every moment at the absolute disposal of the Legislature, either to continue them to her, or to withdraw them from her.—She holds, that by *the existing law of the State*, the whole of her *spiritual* powers and privileges *are recognised to be essentially inherent in herself, underived from any power on earth*, and to be exercised and enjoyed by her *to the absolute exclusion of*

every secular or civil authority whatsoever.—She holds that the jurisdiction of the Court of Session, being, by the express terms of its institution, *limited to matters civil*, that Court, while, by its institution, it is endowed with supreme and absolute power to adjudicate, according to law, upon the whole *civil* rights and immunities of the Church, (as well as on the private rights of her individual members,) has not a shadow of right to interfere with any of her *spiritual* powers or functions; *first*, because there exists an *absolute defect of power* to that effect, no such jurisdiction having been conferred upon the civil court; and, *secondly*, and if possible, still more decisively, because all such interference *has been expressly barred by the State itself*, which has legislatively recognised the whole of the spiritual powers and functions of the Church to be inherent in the Church alone, to the absolute exclusion of all human control. The Church *holds farther*,—and in application of these general principles to what has recently occurred,—that *the disposal of the fruits of a benefice*, being in its nature *civil*, the judgment of the Court of Session in the Auchterarder case, in so far as it may dispose of the fruits of the benefice, is *authoritative and conclusive*, and the Church has therefore *respectfully bowed and implicitly submitted to that judgment, as it respects the benefice;* but in so far as that judgment has respect to the *spiritual function* of the Church, in setting apart one of its own members to the office of the holy ministry, or to the circumstances in which it either is, or is not, proper for her to ordain any man to the cure of souls in one of her congregations, she holds that that judgment has been pronounced *without legal authority*, and forms an *unconstitutional encroachment on her powers and internal policy*,—which her duty *to the State*, as well as to herself, requires that she should maintain sacred and inviolable.

Some persons may perhaps at first be startled by the an-

nouncement of a power, which is represented to be *superior to all human control;* and may be apt to think that such pretensions are dangerous and portentous. But the unnecessary alarms of such individuals will be speedily allayed, when they are reminded that the uncontrollable power thus asserted on behalf of the Established Church, is nothing beyond the power universally conceded, without a shadow either of fear or of reserve, *to every dissenting church and body of Dissenters throughout the kingdom;* and it need not therefore surprise any one to find, that the State has not withheld from its own approved and adopted Church, rights and privileges which it freely concedes to every other.

Indeed, a moment's reflection may satisfy every man, that the existence of this underived power, within the Church itself, is involved in the very conception which one naturally forms of a Church of Christ, and that such a power derogates in nothing from the full and absolute power of the secular magistrate;—for the Church's power relates solely to the *religious* offices and duties of its own voluntary members,—extending to no person or thing beyond them; and even as it respects its own members,—what is called the *power* of the Church involves not a shadow of secular authority, and no compulsive or coactive force whatsoever; —applying itself *solely to the conscience and religious sentiments of its members,—it exhausts itself upon these, and there is end of it. Sua naturâ*, therefore, the Church appears to be a community essentially *distinct from the State, —having its own purposes and modes of action,—entirely different from the ends and modes of action of the temporal power;* and the truth will be found to be, that all alarms regarding the spiritual power proper to any Christian Church, are substantially identical with that most groundless alarm, which at the

very first promulgation of our holy faith, the Jews attempted to insinuate into the mind of their secular ruler, when they told Pilate that our Blessed Lord assumed to himself the office of *a King*, and that therefore he would not be Cæsar's friend, if he let this man go. But the answer which Divine Wisdom then made to the charge, was a conclusive answer to every fear, and is equally appropriate in every age of his Church,—"*My kingdom is not of this world.*"

It will not therefore be supposed that there is any thing *new* in the statement given above, respecting the principles which regulate the connection between Church and State in Scotland. Amid all the ills which the Church of Scotland endured at the hands of the Stuarts, she must at least acknowledge herself indebted to them for this,—that their protracted and oft renewed attempts to establish unmitigated despotism, spiritual as well as secular, in the land, gave her occasion to investigate more earnestly and more perseveringly than any other Church in Christendom, the principles which ought to regulate her connection with the State; and if her sons of the present day do not understand her principles in regard to that subject, they must have sadly degenerated from the men of other times. It is a matter of fact, accordingly, that not only the acts and proceedings of the Presbyterian Church of Scotland, but the writings of her venerated Martyrs and Fathers, teem with assertions and vindications of the principles above laid down; and that for these principles they never ceased to contend, until they were formally embodied in the existing standards of the Church, and were solemnly ratified, at the Revolution, *as the law of the land.*

Whether the principles which regulate the connection between Church and State in Scotland, are either absolutely sound in themselves, or relatively better than others, which

may have been adopted in other countries, I do not stop to inquire. They will be found perhaps to contain enough to recommend them to the judgment of many, as at all events not unreasonable or extravagant: but with their absolute soundness I do not here intermeddle. It is enough for my purpose, if I show that such are the principles *received and held by the Church of Scotland*, and that they are the principles *sanctioned and confirmed to her by the statute law*;—for, from hence it will at once appear, with what show of reason, it is possible to allege that *the Church of Scotland is the creature of the State*, and that *she is subordinated and subjected to the civil judicatories*, like any civil *corporation*,—that owes its whole functions and its very existence to the force of a civil enactment.

The principles of the Church of Scotland, finally embodied in the Confession of Faith, and ratified by the State, may, as I have just hinted, be distinctly traced through the whole history of the Presbyterian Church of Scotland,—there never having been but one opinion in regard to these principles entertained in that Church.

So early, accordingly, as 1578, we have the most explicit statement of the principles of the Church contained in "*The Second Book of Discipline or Policie*,"—a work then adopted by the Church, and ever since recognised to be of the highest authority. The very first chapter of that work is entitled, "*Of the Kirk and policie thereof in general; and wherein it is different from the civil policie*,"—the word *policie* being obviously used as equivalent to *government*; and the assertion of the Church's rights here, as elsewhere, extending not merely to the dispensation of the word and sacraments, but *to the whole organisation and government of herself, as an institution essentially distinct from the civil state and*

government. It is very important that this should not be overlooked. We here read as follows: "*The policie of the Kirk* flowing from this power, (the power of Jesus Christ,) *is an order or form of spiritual government, which is exercised* BY THE MEMBERS APPOINTED THERETO BY THE WORD OF GOD, *and therefore* IS GIVEN IMMEDIATELY TO THE OFFICE-BEARERS, *by whom it is exercised to the weal of the whole body*." * * * "*This power and policie ecclesiastical*, IS DIFFERENT AND DISTINCT IN ITS OWN NATURE, *from that power and policie which is called the civil power, and appertains to the civil Government of the Commonwealth*." * * * * * "This power ecclesiastical flows *immediately from God and the Mediator Jesus Christ, and is spiritual, not having a temporal head on earth, but only Christ, the only spiritual King and Governor of his Kirk*." * * * * "The civil power is called *the power of the sword*, and the other *the power of the keys*." * * * * "The magistrate commands external things for external peace and quietness among his subjects. The minister handles external things *only for conscience cause*. The magistrate handles external things only, and actions done before men. But the spiritual ruler, judges both inward affections, and external actions, *in respect of conscience, by the Word of God*. The civil magistrate craves and gets obedience, *by the sword and other external means*; but the ministry *by the spiritual sword, and spiritual means* *."

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* This *Second Book of Discipline* is a standard of Polity which would do honour to any Christian Church. Some members of the Church of Scotland have, in the heat of the present controversy, expressed themselves, in regard to it, and particularly in regard to the passages quoted above, in terms not very consistent with their duty to the Church, and by no means called for by the nature of the principles, as above laid down, with such singular clearness and propriety. That these principles are not altogether new or unheard of in other

Again, some years later, in 1584, the Church, in animadverting on the usurpation of spiritual power by James VI., observes to his Majesty, "*That to confound the jurisdictions, civil and ecclesiastical, is that thing wherein all men of good judgment have found fault with the Pope*, who claimeth to himself the power of both the swords. *It is as great a fault to a civil magistrate to claim or usurp this power* *."

George Gillespie, the most able and energetic of the Scottish Commissioners in the Westminster Assembly of

countries, will sufficiently appear from the words of a very distinguished dignitary in the neighbouring kingdom. *Bishop Warburton*, after stating that "*Jesus instituted a rule and government*, and formed his followers into a Church or Society," —proceeds to inquire, "*what kind of Society it is?*" and his very first principle, laid down as the foundation of the whole, is "*First*, then, IT MUST NEEDS BE SOVEREIGN, AND INDEPENDENT ON THE CIVIL." "Religious society, *by ends and means entirely different (from the State,)* gives *internal* proof of its *not arising from the State*, and we have shown, by external evidence, that it existed before the State had any being." "Civil and religious society, *having ends and means entirely different*; and the means of civil society being *coercive power*, which power, therefore, the religious *hath not*, it follows that the administration of each society is exercised *in so remote spheres that they can never meet to clash*; and those societies which never clash, *necessity of State can never bring into dependency on one another*." And a great deal more to the same effect; *Warburton's Alliance*, I. ch. 5. It is true that in England, where the King is the head of the Church, where bishops have seats in the Legislature, and where the whole connection between Church and State is so much more complicated than with us,—the accommodation and application of the above general principles have exercised the ingenuity of very able men, who have been led to suggest various solutions of the problem, into which we have no occasion to follow them. But,—whatever may be thought of our Presbyterian Church, in other respects,—of this I am persuaded, that the more the perfect simplicity of her connection with the State is considered, the more will it be seen to possess this undoubted advantage, that it serves to rid the question of all manner of serious practical difficulty, whether on the side of Politics or of Religion. For the character and authority of *the Second Book of Discipline*, see the admirable observations of *Mr Dunlop*, "*Answer to the Dean of Faculty*, p. 54-61 inclusive.

* Calderwood's History, p. 188.

Divines, states the doctrine in these terms :—" The civil " sanction, added to Church government and discipline, is a " free and voluntary act of the magistrate. The magistrate " herein is free from all co-action, yea, from all necessity " and obligation, other than ariseth from the Word of God " binding his conscience. There is no power on earth, civil " or spiritual, to constrain him *." And again, " We ought " ever to remember, *as a fundamental maxim*, the distinction " made betwixt civil and ecclesiastical jurisdiction, in the " Word of God, &c. As to the persons, manner of govern- " ment, matters treated, and forms of proceeding, all is " ecclesiastical, and *only* ecclesiastical, in the one ; and all " civil, and *only* civil, in the other. *Their very principles* " and rules *are different*. In the one, *civil laws* are the rule, " in the other, *the Word of God* is the only rule. *They are* " *independent of one another, in their own jurisdiction ;* and as " an Assembly cannot prescribe rules to the Parliament *in* " *civil matters*, no more ought the Parliament to prescribe to " the Assembly *in ecclesiastical*," &c.

And to take only one other instance, of a later date, the Church, in 1647, approved of the following, among other propositions, viz. " As the rights, power and authority of the civil magistrate are to be maintained according to the Word of God, and the Confessions of Faith of the Reformed Churches, *so it is no less true and certain* that Jesus Christ, the only Head and King of the Church, hath instituted and appointed *a Church government distinct from the civil government of magistracy ;* and that the ecclesiastical government of the Church *is committed by Christ to the Assemblies of the*

* Aaron's Rod Blossoming, p. 182.

Church, made up of the Ministers of the Word and Ruling Elders *.

But to come to the *existing Confession of Faith*, ratified and established by Act of Parliament. It is well known, that in the Assembly of Divines at Westminster, which composed that Confession, the Presbyterians, though long held in debate upon some of these matters, by the Independents and others who differed from them, were in the end completely triumphant,—the opposing minority giving way in the Assembly, and reserving their strength for the English Parliament, where their friends abounded. The Presbyterians, accordingly, proceeded to settle the Confession in their own way, and, while the English Parliament, for that very reason, rejected the whole chapters relating to Church government and discipline, in which, Neal observes, "the very life and soul of Presbytery consists," the Confession was cordially embraced by the Church of Scotland; and the terms in which both the Church and its Confession were subsequently adopted by the State, are (as will be presently seen) too clear and emphatic to admit a doubt of their import.

The Confession of Faith, as matter of course, is mainly occupied with points of doctrine and religious belief; but the nature of the Church and of its government, while they are set down in the succinct terms suited to such a treatise, are expressed at the same time so absolutely as to admit of no mistake. In chapter 25. it is stated, "*There is no other Head of the Church but the Lord Jesus Christ.*" And the 30th chapter devotes its first and leading section to the following most explicit announcement: "THE LORD JESUS, AS KING AND HEAD OF HIS CHURCH, HATH THEREIN APPOINTED

* Stevenson's History, p. 1210-11.

A GOVERNMENT, IN THE HAND OF CHURCH OFFICERS, DISTINCT FROM THE CIVIL MAGISTRATE." The means by which the church officers are to enforce the authority of their government are entirely of a *spiritual* nature, and are stated in these terms: "The officers of the Church are to proceed by *admonition, suspension from the sacrament of the Lord's supper for a season*, and *by excommunication from the Church*;"—the last being the *highest* penalty the Church can inflict,—after which the parties are freed absolutely from her government and control.

The next chapter (the 31st) states, that "for the *better government* and *further* edification of the Church, there ought to be *such assemblies as are commonly called Synods or Counsels*." The Confession does not descend to any particulars respecting the constitution of these assemblies, whether supreme or subordinate, but it distinctly describes their duties, both in regard to *ecclesiastical* and *civil* matters. In respect of the *former*, "It belongeth to Synods and Counsels ministerially to determine controversies of faith and cases of conscience; to set down *rules and directions* for the better ordering of the public worship of God, *and government of his Church*; to receive complaints in cases of mal-administration, and authoritatively to determine the same. Which decrees and determinations, if consonant to the Word of God, are to be received with reverence and submission, not only for their agreement with the Word, but also *for the power whereby they are made, as being an ordinance of God appointed thereunto in his Word*." And with respect to *civil* affairs the statement is, "Synods and Counsels are to handle and conclude *nothing but that which is ecclesiastical*, and are *not* to intermeddle with civil affairs *which concern the Commonwealth*, unless by way of humble petition in cases extraordinary, or by way of advice

for satisfaction of conscience, if they be thereunto required by a civil magistrate."

Again, in regard to the "*Civil Magistrate*," it is stated, (chapter 23,) "God, the supreme Lord and King of all the world, hath ordained civil magistrates to be under him, over the people, for his own glory and the public good, and to this end hath *armed them with the power of the sword*, for the defence and encouragement of them that are good, and for the punishment of evil doers." And after stating that "the civil magistrate *may not assume to himself* the administration of the word and sacraments, or *the power of the keys of the kingdom of heaven*," it proceeds, in terms which will require a single word of observation:—"yet he hath authority, and it is his duty to take order that unity and peace be preserved in the Church, that the truth of God be kept pure and entire, that all blasphemies and heresies be suppressed, all corruptions and abuses in worship and discipline prevented or reformed, and all the ordinances of God duly settled, administered and observed; for the better effecting whereof he hath power to call Synods, to be present at them, and to provide that whatsoever is transacted in them *be according to the mind of God*." Now, upon the duty and authority which are here ascribed to the civil magistrate, I content myself with making two remarks, viz. *first*, That as this authority of the civil magistrate consists in "*taking order*," or "*providing*" that certain *sacred* matters be done and attended to—*not by himself* (for he is immediately before expressly debarred from performing them) but *by the Church;* and as, in so taking order or providing, he is to proceed, not according to any human laws or maxims whatsoever, but "*according to the mind of God*,"—the duty here assigned to him is of a very *peculiar* and *qualified* character; and, *secondly*, That whatever may be the

nature of the duty so assigned to the magistrate, it cannot *by possibility derogate any thing from the power and duty of the Church*, to exercise that government which, by the Lord Jesus Christ himself, the sole Head and King of the Church, *has been committed to its officers, as distinguished from the civil magistrate;* and that the Church therefore can never be absolved from the necessity of administering that government —which constitutes its own assigned and peculiar province —*upon its own most solemn and undivided responsibility.*

The Act of Parliament 1690, chapter 5, is conceived in terms every way accordant with the principles thus embodied in the Confession which it was passed to ratify. It opens in these very solemn terms: "Our Sovereign Lord and Lady the King and Queen's Majesties, and the three Estates of Parliament, *considering it to be their bounden duty, after the great deliverance that God hath lately wrought* FOR THIS CHURCH AND KINGDOM, in the *first* place, *to settle and secure therein the true Protestant religion, according to the truth of God's Word, as it hath of a long time been professed within this land*," —a singular way certainly for the Legislature, if it regarded the Church of Scotland as a *corporation*, to be subjected to the ordinary civil courts, thus to speak of the signal deliverance which God hath wrought "for *this Church* AND *Kingdom*," evidently treating "*this Church*" as *something distinct from*, and *co-ordinate with*, "*this kingdom*," —nay, actually giving the *precedence* to the Church, and speaking *not* of "*this Kingdom and* Church," but of "THIS CHURCH *and* Kingdom,"—a precedence yielded to the Church, not certainly on account of any earthly pre-eminence which belongs to her, for that, as well as all earthly power, she utterly disclaims,—but yielded on account of that *sacred* character, function and government, which the Legislature was in the

act of recognising to be inherent in her, as a spiritual body, distinct and separate from the State itself. But the act, after setting forth the duty of the Legislature in the above terms to settle and secure "*the true Protestant religion, according to the truth of God's Word, as it hath of a long time been professed within this land,*" proceeds, "*As also* THE GOVERNMENT OF CHRIST'S CHURCH *within this nation,* AGREEABLE TO THE WORD OF GOD, and most conducive to the advancement of true piety and godliness, and the establishment of peace and tranquillity within this realm," &c.; therefore it ratifies, in general terms, all the acts previously passed in favour of the Church, and which, besides recognising it, had conferred many civil rights and privileges upon it; and then it proceeds to "*ratify and establish the Confession of Faith* now read in their presence, and voted and approven by them *as the public and avowed Confession*" (not *of the State*, but) "*of this Church*, containing the sum and substance of the doctrine of the Reformed Churches, *(which Confession of Faith is subjoined to this present act,)* as also, they do establish, ratify and confirm *the Presbyterian Church government* and discipline, *that is to say, the government of the Church by Kirk-Sessions, Presbyteries, Provincial Synods and General Assemblies*, ratified and established by the 114 Act James VI. Parl. 12, &c." and then, after repealing a number of statutes hostile to the Presbyterian Church, it makes provision for the Church adjusting various matters of temporary interest, which, it states, the Church is to do "*according to the custom and practice of Presbyterian government throughout the whole kingdom and several parts thereof.*"

It is difficult to conceive how the act could have been framed in a manner more repugnant to the whole notions which have been so widely spread abroad respecting the con-

stitutional *status* and powers of the Church of Scotland; and did my limits admit of a reference to the earlier statutes, they would be found indefinitely to illustrate and confirm this remark. But confining myself to the statute, which constitutes the present establishment of the Church,—I observe that, if by asserting that the Church is "a mere creature of the State," and subject like any corporation to the civil judicatories of the land,—it is only meant that the whole *civil* property, rights and privileges which have, from time to time, been conferred upon the Church, by the State, are derived to the Church solely by force of statute,—and that the power which alone was absolute to confer, is likewise alone absolute to withdraw these rights, or to modify and construe them, either by itself directly, or by the judgments of the civil judicatories, which are its established organs,—the assertion cannot be made in terms more absolute and unqualified than it is made by the Church herself in her standards, and yielded to in the whole of her proceedings and conduct. But if it be meant that the Church, viewed substantively, *in her proper spiritual constitution and government, is in any respect*, "*the creature of the State*," and that she is subjected, in the exercise of any of her spiritual functions, to the authority of any civil court whatever, *the assertion is authoritatively negatived and excluded by the State itself*, which has not only recognised the Church as a community, constituted and organised for the discharge of all its spiritual functions, *anterior to any State recognition*,—and treated that community, so pre-existent, as one at least co-ordinate with the State itself,—*but has solemnly allowed and enacted* that the government of the Church *is derived not* from *the State*, but *directly from the Lord Jesus Christ, the sole Head and King of his Church*,—that it is founded *not upon statute*, but "*upon the Word of God;*" and

that it *has been deposited by her great Head* "IN THE HANDS OF CHURCH OFFICERS,--DISTINCT FROM THE CIVIL MAGISTRATE,"—to be enforced by them only by spiritual means binding the conscience, with which "the power of the sword" may not interfere.

So far from the Church, therefore, being "*a corporation*" "*created*" by this statute,—the State, by this very law of the Church's Establishment, has solemnly recognised the Church—to be *of no secular or human original whatsoever*,—but of one, *immediately and absolutely Divine*, and has debarred itself from the exercise of its secular authority, in regard to the spiritual functions and internal government of the Church, *under the sanction of impiety*, and *of a direct violation of the ordinance of God*. This acknowledged, and enacted, incompetency of the State, to interfere with the internal government and sacred functions of the Church, must extend, *a fortiori*, to every secular Judicatory, erected by the State ;—for what is incompetent to the supreme power of the State itself, can never be competently delegated by it to any subordinate authority. And the *wisdom*, not less than the sound principle, of this arrangement, it is not difficult to vindicate ; for if the Church, *in her spiritual character*, forms a valuable institution to the country,—and who will dispute that she does ?—*then, the interest of the State*, regarding the Church, must be, *that her spiritual duties be effectually discharged, according to their proper nature ;* and to place the Church, therefore, *in the discharge of her spiritual duties*, under subjection to the State itself, or to a civil court,—*neither of them conversant with spiritual matters*,—is not to secure, but *to defeat the very end which the State has in the institution.*

If the Church, in the judgment of the State, fails to realise the great political ends of her establishment,—it is at all

times open to the State to counsel, to warn, to remonstrate with her, in every particular,—to restrict her secular privileges and advantages, in a variety of ways,—and, finally, to renounce her utterly, and leave her stripped of all that constitutes her an Established Church. But if the State, either by itself or by its judicatories, encroaches upon what forms at once the sacred, and the constitutional, province of the Church, it thereby violates, not only the primary law of the Church's being, but that great constitutional law by which the State has, most wisely and most solemnly, bound itself to the Church,—so long as it allows her to remain the Established Church of the country.

Such then being the great fundamental principle upon which the legal establishment of the Church of Scotland rests, the Church conceives it cannot admit of question, *that the ordaining of an individual to the sacred office in one of her congregations, forms an essential part of her internal government, and has therefore been recognised as her prerogative, and secured to her by the solemn act of the State.* This matter is often perplexed by mixing it up with the matter of the benefice, which usually accompanies the sacred office of a parish minister; and the true bearing of that circumstance I shall advert to presently. But, looking at the matter, in the first instance, simply as it regards the constitution and the internal government of the Church, how is it possible for one moment to doubt that the appointment of her ministers is in truth the *most* essential and necessary *of all the spiritual functions which the Church has to perform? The whole end* of the Church's government and existence consists in the feeding, guiding and ruling of the various flocks which compose the Church; and the pastors of the Church at once feed the flocks, and form the highest office-bearers in the Church's

spiritual government; and how then can the appointment of these pastors and rulers be otherwise than the most essential and necessary part of the Church's proper government? After the Church has been solemnly recognised as a distinct community, or *spiritual kingdom*, founded, *not* on any secular laws, but *on the Word of God*, and having *a constitution and government, for spiritual ends*, appointed to her, *by her sacred and only King and Head, and placed by Him directly* in the hand of *her own officers, distinct from the civil magistrate*,—how can she yet be told that the appointment of *these, her spiritual officers, legislators and rulers, is*, after all, *in the hands of the secular magistrate*, who, by the fundamental principles, both of the Church and of the Constitution, *is absolutely excluded?* Any notion of the kind is self-contradictory and impossible. In setting apart the pastors of her congregations, and the rulers of her spiritual courts and assemblies, the Church must be guided only by those principles and considerations which determine what is conducive to the edification of the body of Christ, and to the sound spiritual government of his Church,—objects which have been committed by him into her hands, directly and exclusively, as her sacred and inalienable trust.

Language has sometimes been employed in treating of this subject, which seems to import, that while the *act or ceremony* of ordaining a man to the sacred office is spiritual, and is therefore peculiar to the Church, yet that *the right to judge* in what circumstances this solemn act, peculiar to the Church, ought by her to be performed, rests *not at all with the Church, but with the civil judicatories.* According to this startling notion, *the ceremonial* belongs to the Church, but the whole *spiritual rule and power* belongs *to the Court of Session;* and the office-bearers of the Church, instead of exercising the govern-

ment committed to their hands, as spiritual rulers distinct from the civil magistrate, are reduced to be the mere instruments for executing the *spiritual* judgments of the *civil* court. It will not be expected that the Church should entertain any such view of her established constitution; or that she can for a moment suppose, that the spiritual rule which the State has committed to her, for wise and important public ends, is thus to be reduced to a mockery,—a rule in name,—but in fact a degrading bondage,—as unprofitable to the State, as it would be unlawful and ignominious to the Church herself.

But I must go on to observe that the civil court founds its alleged supremacy over the Church courts, not on the Confession of Faith and Revolution settlement,—which no ingenuity can render compatible with such pretensions,—but on the terms of the statute, conferring upon patrons the right of presenting *to the benefice;* and let it therefore just be considered, for a moment, how far that statute can afford any constitutional ground for such alleged supremacy.

The act 10. Queen Anne, chap. 10, (A. D. 1711,) restored patronage, after the Church had enjoyed the benefices, free from the encumbrance of that right, for a period of twenty-one years, under the security of the Revolution settlement, and for a shorter period, under the no less solemn security of the Treaty of Union. But so it is, this statute, —in circumstances and with views which I do not stop to characterise,—restored the patron's right to present, and farther enacted, that "the Presbytery of the respective bounds shall, and is hereby obliged to receive and admit, in the same manner such qualified person or persons, minister or ministers, as shall be presented by the respective patrons, as the persons or ministers presented before the making of this act ought to have been admitted."

Whether it proceeded from the view taken of the import of this act, or from the feeling of the Church and country in regard to it,—the fact is unquestionably, that for many years subsequent to its enactment, no attempt was made to enforce it, in a court of law, to any effect whatsoever. The Church habitually gave more effect to *the call* of the parishioners than to the nomination of the patron,—often peremptorily rejecting the presentee, on the sole ground of the inadequacy of the people's call; but notwithstanding, no instance occurred, at that period, of the civil court interfering, *even in regard to the disposal of the benefice*. After a time, however, the policy *of the Church itself*, in regard to this matter, underwent a change. The Church (the majority of it) came *to give its preference to the unrestricted use of patronage*, and from that moment was wholly disinclined to try or consider, what might be the just import of the statute law on the subject, as affecting the benefice. There was, however, all along, a respectable and influential minority in the Church, who contended that the duty and the right of the Church was conformable to what had been the original practice, under the act. And the policy of a decided majority of the Church having recently reverted to what it was originally,—it became necessary for the Church to enter on the consideration of the whole question, with a view to the regulation of her future proceedings.

The result of these deliberations, after several years' discussion, was the passing of the *veto* law, as already explained; —and upon the matter being brought into the Court of Session, the questions raised were, those that have been stated, viz. 1*st*, *The civil question*,—Whether the Church was entitled to the benefice of Auchterarder? And, if not,—then, 2*dly*, *The constitutional question*,—Whether the Court could competently direct proceedings against the Church to any effect

beyond denying to her that civil right?—with respect to the former of which, the Church appeared in Court as a litigant, to defend her civil right;—while in regard to the latter she appeared, both here and in the House of Lords, solely to the effect of informing the mind of the Court, and of respectfully declining all civil jurisdiction.

In pleading the *first* point, and defending her civil right to the benefice, the Church (besides using a variety of pleas with which I have had no occasion to trouble my readers) represented to the Court,—in exposition of the view which has been already adverted to,—that the above statute of Queen Anne, restoring patronage, and imposing on Presbyteries the obligation, which has just been quoted, is not *the only* statute appearing in the statute book, which ought to be read and considered, with a view to ascertain and define the exact nature and extent of the obligation truly imposed on the Church by the terms employed in that statute. The Church represented that there exist a variety of *other* statutes, allowing powers and privileges to the Church, and in particular, the great statute 1690, establishing the Church at the Revolution, which recognised absolutely the inherent power and right of the Church to regulate and determine all spiritual matters, in virtue of the power derived directly from her great Spiritual Head,—that the ordination of her ministers being unquestionably a spiritual matter, and the most sacred and important of all spiritual matters, the regulation of it, is, by this statute, guaranteed exclusively to the Church,—and that this statute *standing still unrepealed, and in its full extent*, it was as incompetent for the Court to overlook it, or deny effect to it, as it would have been to overlook or reject the enactment of Queen Anne;—that if there was any apparent inconsistency in the

two statutes, the duty of the Court was,—not hastily to give full effect to the provision of the one,—to the disparagement and total destruction of the other,—but to read and construe them together, and to give such effect to each as the provision of the other would fairly admit of. In this way you would reconcile and give legitimate effect *to the whole law;* whereas, by the other course, you would fulfil one part of it, only by breaking another part, of equal authority. The Church, therefore, humbly submitted, that the only construction which could legitimately be put on the act of Queen Anne, consistently with the great fundamental statute of 1690, was, that the Presbyteries of the Church were to be obliged to admit and ordain the presentee,—*but only according to the rules of the Church*, which, in virtue of the statute 1690, form *the law of the land, wherever the spiritual matter of ordination is concerned;*—that, in consequence of his presentee being rejected, the patron would, no doubt, be put to the necessity of naming another, and perhaps still another,—having always however this security, under the statute, that none could ultimately be admitted, to the benefice, who had not first been presented by him;—that such rejection of a presentee might, in a public point of view, be beneficial, or it might, perhaps, be injurious; but it never could be of the nature of *a legal wrong*,—seeing it flowed necessarily from the exercise of the Church's power, in matters spiritual, which had been absolutely guaranteed to her, by the law and constitution of the country; and that hence Mr Young having been rejected, in conformity with the law of the Church, such legal rejection could form no ground for diverting the civil fruits of the benefice from their ordinary legal destination. Or, to state the plea in general terms: The Church submitted that *her exclusive right to regulate and determine all spiritual matters connected with her inter-*

nal government having been conceded to her *by the State, in the most solemn and fundamental law of her establishment, and that law remaining unrepealed and in entire force, it could not have been the intent, and could never be the legitimate effect, of a subsequent enactment, to invade and destroy the most important and vital part of her spiritual government, thus secured to her by a fundamental and still subsisting law.*

This view was considered to be sound and conclusive by the *minority* of the Court, consisting of Judges of the highest eminence, and including, in particular, one venerable individual, who, as he is the last remaining representative of a former generation of Judges, may, without much impropriety, be considered as having expressed, upon this occasion, the sentiments which prevailed among his former brethren, — nearer to the period when these subjects were more generally canvassed, and were better understood than they have always been in later times. A sufficiently narrow majority of the Court, however, and afterwards the House of Lords, took a different view ; and the Church in consequence, has, for the present, lost the civil right to the benefice of Auchterarder. The loss of the civil right to the benefice is no light matter to the Church *. The loss of the benefice is just that, which, if general, would amount to a total abolition of the Establishment ; and the loss of that right therefore, in any particular instance where the Church does not comply with the condition of the right, seems to be the natural and appropriate legal remedy,—a remedy amply sufficient to vindicate the civil law, and to operate as a compulsitor, inducing the Church (if she cannot obtain an alteration

* I am persuaded that no one will repeat the hasty observation made, on this subject, by the Dean of Faculty.

of the civil law) to arrange, if possible, her own procedure in the spiritual matter, so as to bring it into conformity with that law, which must ever dispose absolutely of this as well as every other civil right which has been conferred upon the Church.

When it is said therefore, (as it daily is,) that it is preposterous in the Church to pretend to interpret the statutes of the land for herself, and exercise, in regard to them, a jurisdiction co-ordinate with the Supreme Courts of the country; and that, upon a question of civil right arising between her and the patron, she ought never to have attempted to judge in her own cause, but ought at once to have submitted to the judgment of the civil court,—and more especially of the House of Lords,—to which she herself appealed;—the answer is,—that the duty of the Church, so correctly propounded to her, *has been discharged by her, in exact conformity with these recommendations.* As to every thing *civil* the Church *has* submitted to the *civil* court. In such matters, she pretends to no jurisdiction of any description, or of any degree, but utterly repudiates it. She accordingly took her place at the bar of the Court of Session, and of the House of Lords, precisely in the same attitude as the very humblest litigant; she defended her civil right to the benefice, which was assailed by the action,—received the judgment of the Court against her right, and submitted respectfully to the loss which that judgment entailed upon her. By so doing the Church has fulfilled her *whole* duty to the *civil court.*

But, while such has been the pleading and the conduct of the Church, in regard to the matter of her civil right,—in exact conformity with what it is alleged it ought to have been,—I proceed to observe, that in regard to the *second* branch of the cause, and the proceedings, so far as they were direct-

ed towards the *spiritual* function of *the Church*, in *appointing a man to the holy ministry*, and aimed at *coercing* the Church, in the execution of that most essential and sacred part of her internal government,—the pleading and the conduct of the Church have been, not less, in perfect consistency with each other *.

The question thus raised was in no respect one of civil or private right, falling necessarily under the jurisdiction of the civil judicatories. It was *strictly a constitutional question, arising between the civil court itself, on the one hand, and the Church on the other, respecting the province assigned to each, in the constitution of the country;* and, in that constitutional question, I have to submit, that the Church was indisputably right, and the civil court was wrong. Many who most confidently entertained an opposite view, at the first, are now, I have reason to believe, satisfied that their opinion was formed on a most imperfect view of the subject.

Had the Church, indeed, been a mere civil corporation, *(and the whole mistake has arisen from treating her as such,)*—had the Church been *a mere civil corporation*—then, to be sure, the civil court would have been entitled to intermeddle in all her internal affairs, and to construe, apply and enforce every statutory enactment which had the remotest bearing upon any of her proceedings. But as the Church is *not* a *civil* cor-

* It has been said, that the Church, by appealing to the House of Lords, *bound herself* to submit to the judgment to be pronounced. The observation, if it refers to the benefice and the civil right, is just; and the Church *did* submit:—but, if it has reference to the jurisdiction of the civil court *in spiritualibus*, the observation is mistaken;—otherwise the judicial *denial* of jurisdiction is tantamount to its *admission;* and parties must be barred from ever appearing, to inform the mind of the Court,—a practice highly convenient in judicial procedure, and familiarly recognised as, under many circumstances, a befitting mark of respect,—not, in the slightest degree, involving the extravagant contradiction which I have just mentioned.

poration—nor indeed a *corporation of any kind*, (according to either the Scotch or English meaning of that word,) but is *a separate spiritual community, or Kingdom*, recognised *by the State itself* to have *all spiritual matters subject exclusively to her own internal government*, by officers *distinct from the civil magistrate*, it is *not* for the supreme secular power itself, and far less for one of its judicatories, to reach beyond its appropriated sphere, and to enforce *spiritual* obligations—with which it has no concern—upon the Church, to which the State has absolutely secured all such matters, as her sacred and inviolable province. To all assertions, therefore, that it is *presumptuous* in the Church, to maintain her constitutional right, and that she would have exhibited a noble Christian spectacle, if she had quietly submitted to the unhallowed and unconstitutional intrusion of a civil court, upon the most sacred of her functions—I answer—that—to say nothing of the obligation due by the Church to her Divine Head,—she would have proved herself utterly unworthy of the important position assigned to her in the constitution of the country, if,—while she submissively resigned her benefice in obedience to the judgment of the civil court,—she could have hesitated, one moment, to maintain inviolate her own constitutional and sacred right, and that if she now fails to maintain that right, with unbending fortitude,—so far from exalting her Christian character,—she must expose herself to the just and unmitigated contempt both of friends and foes.

The *civil* court may rightfully dispose of the benefice, and the whole *civil* rights of the Church; and the Church (as she has done) must submit; but if the Court is to *coerce* the Church in the pre-eminently spiritual function of *setting apart a man to the holy ministry*, and attempt, by means of the common executorials of the law, to enforce the performance of that spiri-

tual function upon the Church, or restrain her in the performance of it, the Church has no choice, either on religious or constitutional grounds, but—to *stand firm*, and leave to the Court the guilt of *perverting* the power intrusted to it by the State, and *of illegally persecuting the Church of God.*

In the history of the law of Scotland during the last 100 years, many cases have occurred, in which the Court of Session has exercised its jurisdiction over the Presbyteries of the Church, — either to prevent them exercising in their own persons the civil right of presentation, as devolving to them, *jure devoluto*,—or to restrain them from proceeding upon, and giving effect to, a right of presentation, claimed by one out of two or more competing patrons. In all such cases,—where the Presbyteries were either claiming the civil right of presentation to themselves, or giving effect to that civil claim as advanced by others,—the competency of the Court's interference was as obvious and unquestionable, as was its competency to dispose of the present case of Auchterarder, in so far as regarded the civil right to the benefice, under Lord Kinnoul's presentation. But, while such cases, under a variety of shapes, have all along been of frequent occurrence,—*no one case has ever occurred, in the history of the Court of Session, until the present time, in which the Court ever contemplated the possibility of its compelling a Presbytery to take steps, towards the ordination of a man to the holy ministry, under any circumstances whatsoever, or of its restraining a Presbytery from the performance of that sacred function—when it was to be performed, irrespective of any presentation and of all civil claim to the benefice.* It has been reserved for us in the present day to witness, for the first time, the perpetration of any such encroachment on the sacred functions of the Church.

But, while the Court, until now, has thus religiously abstained from all attempts to coerce the Church in the discharge of her own sacred and peculiar duties,—there has occurred *one* memorable instance, in which it *was proposed* to the Court to interfere with a Presbytery in this sacred matter; and the mode in which the demand was met by the Court is not a little instructive.—The case is fortunately reported by a Judge of no small celebrity, *(Lord Monboddo);* and it marks with peculiar distinctness the broad line which limits the Court's jurisdiction, because the summons contained *competent* conclusions, respecting the presentation and the civil right to the benefice, which conclusions the Court entertained, and also the *incompetent* conclusion, with which the Court dealt in the manner now to be mentioned. After stating the case * at length, on various points, his Lordship adds, "There were *other two* conclusions of the declarator, *which the Lords would not meddle with.*" And *one* of these was,—"That the Presbytery *ought to be discharged to moderate a call at large, or settle any other man,*" *(than the presentee)*—in other words, "that the Presbytery ought to be *prohibited from settling a man as pastor, without reference to the presentation or the benefice.*" With *this* conclusion his Lordship states that the Court "*would not meddle:*" and the ground on which they thus refused to admit or entertain such a conclusion, he gives in the following emphatic terms:—"BECAUSE, THAT WAS INTERFERING WITH THE POWER OF ORDINATION, OR THE INTERNAL POLICY OF THE CHURCH, WITH WHICH THE LORDS THOUGHT THEY HAD NOTHING TO DO." The precise views, which, it has been seen, are so clearly deducible from the statutes, were therefore *firmly and most familiarly fixed* in the minds of the

* Hay of Belton against Presbytery of Dunse, 26th Feb. 1749, Brown's Supplement, v. p. 768.

Judges of Lord Monboddo's days, *as being the fundamental and unquestionable principles of our constitutional law, in regard to this interesting subject.*

And the principles which were thus judicially affirmed, and unhesitatingly applied in the practice of the Court, have been laid down, and expounded, as the undoubted principles of our law, in a professed constitutional Treatise, and that too, with a precision and authority which it will be found impossible to controvert.

Lord Kaimes, a man eminently distinguished as a philosopher, not less than as a lawyer, has devoted one of those very learned and highly finished treatises with which he has enriched the law, to the subject of the *Jurisdiction of our Courts* *. His Lordship there states, that "*Ecclesiastical* "*Courts* have an important *jurisdiction*, in *providing parishes* "*with proper ministers or pastors;* and they exercise this "jurisdiction, by naming for the minister of the vacant "church, that person duly qualified, who is presented by "the patron. Their sentence *is ultimate, even where their* "*proceedings are illegal*," (*i. e. illegal* according to *civil* law.) "The person authorised by their sentence, *even in opposi-* "*tion to the presentee*, is, *de facto, minister of the parish, and* "*as such is entitled to perform every ministerial function.*" He then goes on to explain, that the person, thus settled, in opposition to the presentee,—*though minister of the parish,* "*has no claim to the stipend.*" And, on this subject, he adds, "—It would be a great defect in the constitution of a govern- "ment, that ecclesiastical courts should have an arbitrary "power in providing parishes with ministers. *To prevent* "such arbitrary power, *the check, provided by law*, is, that "a minister settled illegally *shall not be entitled to the sti-*

* *Kaimes' Law Tracts*, "*Courts.*"

"*pend. This happily reconciles* two things commonly oppo-
" site. *The check is extremely mild, and yet is fully effectual to*
" *prevent the abuse.*" (P. 240, 241.) In another place, he observes, " *Nor is it inconsistent, that two courts should give*
" *contrary judgments, to different effects; for both judgments*
" *may stand, and be effectual.*" * * * " *I see not there*
" *can be in Britain, a direct conflict betwixt two courts, both*
" *trying the same cause, to the same effect.*" * * * " In
" this island, matters of jurisdiction are better ordered than
" to afford place for such *an absurdity.* An *indirect* conflict
" may indeed happen, where two courts, handling occasion-
" ally the same point, in different causes, are of different
" opinions on that point. Such contrariety of opinion ought,
" as far as possible, to be avoided, as tending to lessen the
" authority of one of the courts, and perhaps both;—*but*, as
" such contrary opinions are the foundation of judgments,
" *calculated for different ends and purposes, these judgments,*
" *when put to execution, can never interfere.*"

But what Lord Kaimes thus conceived to be "*an absurdity*," and an absolute *impossibility* under the well-ordered constitution of this country, we have now unfortunately seen realised, and that too in the most painful form which it could possibly assume. Whether this *direct conflict* between courts, whose spheres, and ends and purposes are so widely different, has been brought about, otherwise than by a direct breach of the constitution, my readers must judge. The great object, in the constitutional arrangement of jurisdictions, is to adjust them in such a manner, that, as Warburton expresses it, "*they may never meet to clash.*" Lord Kaimes shows how happily this fundamental principle has been carried into the most complete effect, by us, in regard to the ecclesiastical and civil jurisdictions,—and that too even at the most critical point; so that while the former have the undoubted constitu-

tional power to settle pastors over their flocks,—"the check, *provided by law*," against the abuse of this *purely ecclesiastical power, committed absolutely to the Church*, is *as purely a civil check, within the clear province of the civil court*,—a check, "mild," he says, "yet fully effectual to prevent the abuse,"—and thus "*happily reconciling*" what might be so apt to come into ruinous collision. But all this beautiful, and truly perfect arrangement,—an arrangement of which the country had just cause to be proud,—one so clearly deducible from our Statutes,—and so scrupulously observed by all our judicatories, up to the present day,—the Court of Session has now seen reason to break down and trample under foot. It has transgressed its own constitutional and clearly defined limits,—and burst into the constitutional, and most sacred, province of the Church,—making the ecclesiastical and civil powers clash at every point, in a manner that is already most painful to every feeling, and that threatens soon to convulse the country. The Church, in the unfortunate and, it is to be hoped, very temporary, difference, which has arisen between the ecclesiastical and civil laws, has confined herself most scrupulously to her own spiritual province, in providing pastors for her flocks,—relinquishing her benefices to the entire disposal of the civil courts; and all that is to be regretted and condemned is, that the civil court has not confined itself to its own constitutional province, in applying the appointed and adequate *civil* check, and that it has thus ruinously failed to follow the meritorious example so well set to it by the Church.

That a large, and undoubtedly most respectable body of lawyers, in their zeal to extend the scope and authority of the law which they practise or administer—should have loudly denounced the "unheard of" and monstrous usurpations of the Church, is perhaps not unnatural; but the Public may be

interested to find—that the application of such epithets requires to be shifted,—and that it is the Church which has just ground to call aloud for deliverance, at the hands of the country, from the "*unheard of*," most unconstitutional and most fatal usurpations *of the civil court* *.

The notion, which has been most industriously spread abroad, is—that, upon the judgment of the civil court being pronounced against her right, the Church,—without regard either to her own principles, or to her solemnly enacted law, or to the obvious interests of the country,—was bound instantly to annul her law, and resume the position occupied by her prior to 1834. But, what has created the apparent necessity for such an utter dereliction of duty on the part of the Church?—*what, but the palpable breach of the Constitution, committed by the Court of Session?* If the civil court had confined itself to the application of the constitu-

* An anonymous writer, in a periodical journal of some note, has devised a summary method of disposing of the constitutional powers of the Church. According to him, it is a great fundamental principle, that the constitutional powers of any body in the State are indicated by the amount of physical or co-active force placed at its disposal; and as the Church has *no* co-active power, it hence follows that she must be constitutionally subordinated, in all things, to the civil court. But, according to this novel view, it follows,—that the Church is constitutionally subjected,—and that, too, *in spiritualibus*,—not only to the supreme civil court, but *to every sheriff's court, and police magistrate, in the kingdom*;—for they all possess *some measure* of co-active power, while the Church has absolutely *none*. And it will not do to answer,—that the supreme court will keep its subordinates in check;—for, by the very terms of this fundamental principle, the *fact* of these subordinate courts and magistrates possessing *more co-active power than the Church*, is itself *the proof* of their possessing constitutional superiority,—which they must therefore be *constitutionally* warranted to employ. According to this doctrine, too, I conceive the Court of Session itself should be cautious, how it enters into a contest of *constitutional* powers with the Court of Justiciary;—for while the former might no doubt imprison,—the latter would inevitably *hang*—all its antagonists. This mode of reducing constitutional questions, into questions of *club* law, is certainly entitled to the merit of originality; and it may serve, at the same time, as a specimen of the mock solemnity, but actual derision, with which this most grave subject has been handled, in more than one quarter.

tional civil remedy, the Church would have lost one, two, three, perhaps four, of her benefices; and would, in every such instance, as it occurred, have been increasingly burdened with the maintenance of the ministry, out of her own resources,—a burden to which she has been occasionally subjected before, from the operation of a similar cause. The loss would not have extended beyond three or four parishes, before the civil and constitutional check, thus applied, would have operated silently, but most effectually. The Church, moved by every consideration, would, as soon as the requisite deliberation and consultation admitted, have proceeded to show the necessity of modifying the civil law in conformity with the change of system, which she had been advised to introduce into her ecclesiastical procedure,—would have proved (as I shall presently do) that her real objects partake in nothing of the wild and extravagant character which has been ascribed to them,—would have evinced her perfect readiness to modify her ecclesiastical procedure, in the form and manner that calm reflection may recommend as most expedient, and to concur with the Legislature, in giving full effect to such an arrangement, by a joint enactment of the Legislature and of the Church. But all this tranquil and ready adjustment has been disturbed by the profane and unwarrantable intrusion of the Court of Session,—an intrusion which has overturned all order, defeated the profound wisdom of our constitution, realised a direct, and what, constitutionally speaking, is an impossible conflict, and has thereby raised an agitation and ferment, in the country, as deplorable in itself, as the occasion for it was uncalled for and unjustifiable.

When it is said therefore—"Let the Law be obeyed,"—I answer—*The Law has been obeyed;*—LET THE CONSTITUTION BE VINDICATED;—let the intruder retire within his own province;—let the assailant desist from his illegal attacks;—let the broken peace of the country be restored;—let the inte-

grity of the Constitution be preserved. The Church will soon satisfy the country of the reasonableness of her proposals;—and the illegal conduct of the civil court, so far from inducing delay, on the part of the Legislature, should afford additional reason for the most prompt and vigorous interference; in order that unconstitutional and indecent warfare may be terminated, and that harmony, and peace, and the unbroken usefulness of our invaluable institutions, may be instantly secured *.

When the matter is so clear upon our own constitutional law, it is perhaps superfluous to seek additional illustration from the law of any foreign country, which, after all, can only furnish imperfect analogies. At the same time, the above conclusions, if I mistake not, may receive considerable confirmation, by reference to the principles of the law of England in regard to the same subject. In speaking of a foreign law, I would desire to proceed with a due measure of caution; but I understand it may be stated broadly, that, according to the English law, *there is no secular power on earth that can compel a bishop to ordain a man to the holy ministry; nor yet to take a man on trials, with a view to ordination.* It is no doubt true, that *after* a man is ordained to the ministry, the civil courts will compel *collation* and *induction to the benefice.* But these steps *are both civil in their nature. Collation* is "*the conferring of the benefice,*" (Black-

* While I venture to think that the view of this important constitutional question, above submitted, is substantially sound, and that farther discussion would tend only to place the argument in a more satisfactory light,—it is proper to remind my readers, that the Church has no need to make out an *incontrovertibe* case, upon this point. If she shows *strong* and *probable* grounds in support of her view of the question,—she may, most legitimately, expect all enlightened statesmen to concur, in an immediate practical adjustment of the existing collision;— seeing it would be not less ruinous to the country than unjust towards the Church, to keep the whole matter in abeyance, until the Church brought about unanimity upon a controverted point of constitutional law.

stone, ii. p. 21, Hoveden's edition,) and "*induction* is done by holding the ring of the door, tolling the bell, or the like; and is *a form required by law*, with intent to give *the parishioners notice and sufficient certainty of their new minister, to whom their tithes are to be paid.*" (Ib. i. p. 390.) Now, it so happens that by the law and practice of the Church of Scotland *there exists no form of collation and induction separate from ordination, or from the solemn service of setting a man apart as the pastor of one of her congregations.* If there were, —or if any can be devised, I daresay the Presbyteries of the Church,—though it would not be a very honourable task to impose upon them,—would still, for the sake of peace, and to evince their perfect sincerity in resigning the civil fruits of the benefice to the entire disposal of the Court of Session, —be ready to "*confer the benefice*" and to "*toll the bell*," so as to give the presentee a right to draw his stipend from the parishioners, (if the Court of Session thinks he has a right to it.) All that they object to is, to *the ordaining the presentee to the holy ministry, or appointing him the pastor of one of their congregations, in violation of the law of the Church;* and as ordination cannot constitutionally be compelled in England, so neither may it be constitutionally compelled in Scotland. The compulsion used has wronged the Church; and if she were to submit to the compulsion, she would sink beneath the dignity of a Christian Church.

The fact of there not being known in the usage of the Church of Scotland, any form of collation or induction to a benefice, separate from ordination, or from the constitution of the pastoral office, has arisen from this circumstance,— that while she does not object to ordain *missionaries to the heathen* indefinitely, and without a cure, she ordains no man *to the holy ministry, within the Church, except he is at the same time designed as pastor to a particular congregation.* There are besides, correctly speaking, no such thing, in the present

Church of Scotland, as *benefices*, or ecclesiastical *estates*, into which beneficiaries can be properly *inducted* or *collated*,—the ministers of the Church being now mere stipendiaries; and hence, if there be a benefice, or rather *stipend*, legally attached to the ministry in any parish, or congregation, the individual designed as pastor to that parish does, ordinarily, and *eo ipso* of his office, become entitled to the stipend, attached to the ministry in it. In England, again, it is practically different; for a man is there first ordained to the ministry generally, and thereafter, on his being presented to a benefice, ordination is not required, and cannot be repeated a second time; but to give effect to the presentation, it is correct and necessary to keep up the separate forms of collating and inducting to the benefice. At the same time, while such is *practically* the operation of the English system, it is well worthy of observation, that the Scottish rule in this matter is by no means founded on caprice; but, on the contrary, is founded on principles recognised, of a very ancient date, and of which, moreover, very distinct traces are still to be found in the English Church. I find it stated historically, and I have no doubt correctly, in one of the canons of that Church, (though I have not leisure at present to trace it farther,) that "It hath been long since provided by many decrees of the ancient Fathers, that none should be admitted either deacon or priest, *who had not first some certain place where he might use his function*;" (Burns' Ecclesiastical Law, vol. iii. p. 29); and by the existing law of England, no man can be ordained, except upon what is called "*a title*," which, though it may have deviated somewhat from the original notions entertained on the subject, and may now often be little more than matter of form, is yet distinctly traceable to its foundation in the primitive laws of the Church, and is an unequivocal recognition of the prin-

ciple, that none should be admitted to the ministry who has not some certain cure in which to exercise his function. Now, in Scotland, we hold a call of a Christian congregation to be essential to, or to be involved in, the idea of a title to the office of the ministry within the Church, *(and of that principle, too, there is abundant recognition in the ancient Fathers)*; —and if the Church of Scotland, therefore, in her existing practice, has thus preserved not only the form but the substance of these ancient laws of the Christian Church, she surely is not to be blamed for so doing; and she cannot be made responsible for not having a separate form of collation and induction applicable only to the benefice,—seeing that peculiarity has naturally resulted to her, only from a strict adherence to correct ecclesiastical principles.

And this leads me to notice an observation frequently made, and apparently with some effect, viz. that since the Court of Session has not (as yet) required the Presbytery *to ordain* the presentee, but only to take him on trials, with a view to ordination, it was unreasonable in the Church not to yield this simple point to the Court, and to postpone the matter of *the call*, until after the presentee had passed through his trials. But if, as has just been seen, the due and correct order of ecclesiastical procedure requires, that the call of the people should precede the trials and the ordination,—was it not more unreasonable in the Court, to ask the Church to reverse her order, in this proper ecclesiastical matter, than for the Church to adhere to her established usage in regard to it? And then,—what conceivable end or purpose would the Court have in requiring such a change of procedure? For, if the presentee was to be rejected, what could it signify to him whether he was rejected before or after his trials? and why then put the whole of an ecclesiastical court to a great deal of trouble, and the presentee himself to a great

deal both of trouble and anxiety, which might all be thrown away to no purpose? *The truth was perfectly manifest.* The Court was determined, (and so they stated,) to disregard—not only the *veto*, but *the call* of the people, *in any shape*, and *at every stage* of the procedure; and for the Church therefore,—without the shadow of a reason,—to have departed from her only proper course of ecclesiastical procedure, and to have suffered herself to be concussed, to go through the trials of a man, with a view to ordination, —which is just as essential a part of the ecclesiastical procedure, and one as entirely peculiar to the spiritual function of the Church as any other part of it,—would just have been to surrender her great constitutional privileges, and leave herself more open than before to the fresh inroads of the civil court.

I have only one other remark to notice before dismissing the consideration of this great constitutional question. An extreme case has sometimes been put, by way of illustration, against the Church. It has been said,—Suppose the Church, instead of passing the *veto* law, had passed an enactment to the effect, that the bare acceptance of a presentation was *ipso facto* to operate as a disqualification for the ministry, such a law would no doubt be spiritual, just as much as the *veto* is;—but could it possibly be tolerated that the Church, on the ground of her spiritual right, is thus to pass laws, in the most flagrant and indecent contradiction to the civil laws of the land? Now, in regard to such a case, I admit, not only that the necessary and legal consequence of passing such a law, would be, that the Church must be stripped of her benefices; but I farther admit, that as the supposed law would impose a *direct negative* on the operation of the statute,—if the Church came to be of opinion that her spiritual duty was thus

incompatible with the plain meaning of the existing civil law,—she would be bound, according to every rule of propriety, to apply at once to the Legislature, for a repeal of the statute;—and that she could not proceed to her object, by an exercise of her spiritual power, without justly exposing herself to the charge of treating the Legislature with contumely. But, the case before us is widely different. There is not the slightest pretext here for charging the Church with contumelious disrespect towards the Legislature. The propriety of introducing some check on the exercise of patronage having been forced, by circumstances, upon the consideration of the Church, she was led to believe, upon grounds which many still think perfectly sound, that an ecclesiastical check, such as she contemplated, was perfectly consistent with the legitimate operation of the statute law; and without that belief, it is unquestionable that she would not have proceeded as she did. Having that belief, however, and being supported with the full concurrence of the existing Government, so far from its being the duty of the Church to throw the matter into the hands of the Legislature,—it would have been a positive violation of her duty to have done so;—for every one acknowledges that such a step ought never to be taken, except as the very last resource. Having a strict view, therefore, to the public interests, in such circumstances,—the duty of the Church was to effectuate what she conceived to be a necessary public object, by an exercise of the power, in spiritual matters, inherently belonging to her as a Church; and now when,—with the full concurrence and sanction of the Government,—she has honestly, and with a view to the public good, discharged that duty, according to the best of her judgment—to require that she shall not only suffer the pecuniary penalty, consequent upon a different

view of the civil law having ultimately prevailed, but that, —before you will so much as consider the propriety and necessity of her measure,—she shall, upon the unconstitutional and unjustifiable mandate of a civil court, rescind the spiritual law, which she has most solemnly enacted, for the guidance of her own ecclesiastical procedure,—is—to require a Christian Church directly to violate her first and most sacred duty (*to which nothing on earth should ever induce her*,) and in doing so, to do that, which must necessarily involve a loss of character and of general respect,—a loss not more injurious to the Church herself, than to the State, whose established Church she is.

The Established Church of Scotland has been brought into her present position, through much pain and anxiety, in the conscientious discharge of her public duty. Being, as she is,—perhaps by far the most important and most meritorious institution in the country, she is entitled to expect that the course of conduct she has pursued, in very difficult and trying circumstances, shall be judged of with the utmost candour and sobriety of temper,—I might add,—were it at all necessary,—with the utmost forbearance and indulgence. But the Church stands in need of no indulgence. Let her conduct be only examined with that calmness and consideration which her public situation in the country merit and demand, and she respectfully, but unhesitatingly, undertakes to vindicate both the principle and the policy of her measures, to the general satisfaction of intelligent and reasonable men. Not only her duty as a Christian Church, but her sense of interest as a Church closely associated with the State, and deriving from the State manifold advantages and aids towards the accomplishment of her great object, must at once bind and incline the Church to yield the most defe-

rential respect, and the utmost possible submission to every expressed wish and injunction of the State. She cannot therefore but be deeply interested in vindicating her character from the aspersions which have been so hastily, if not so harshly, cast upon her,—as if by her recent proceedings she had failed in becoming respect towards the State. Having been led into her present position in the manner already detailed,—the existing civil law having been interpreted so as to deprive her of some of her benefices—and the proceedings of the civil court tending illegally to drive her into an abandonment of her most sacred constitutional rights,—all that the Church now represents to the Legislature is, that, in regard to the ordination of her ministers, she finds herself, under actual circumstances, absolutely necessitated by principle, consistency, and a consideration of the public good, to abide by her fundamental law respecting non-intrusion; and she humbly solicits the Legislature, upon candid consideration of the views of propriety and sound policy which she submits, to make such a modification upon the existing law of lay patronage, as shall, at once, save her from persecution, and render the civil law consistent with the first principles, and with the practical efficiency, of the Church.

Now, this is *the exact attitude in which the Church of Scotland stands at the present moment;* and I ask, where is the *disrespect*,—where is the *hostility*,—the *defiance*,—the *rebellion* that have been so loudly talked of? Is there any thing in her whole conduct that is not perfectly deferential and dutiful,—befitting, in every way, her high Christian character, and suited to that distinguished position which, as she has been long honoured to hold it in the country, she hopes still long to hold, for the public good? The majority of the Church who have guided her recent proceedings, after having been

wantonly charged with rebellion against the State, have farther been told that, if dissatisfied with the statute law, as recently interpreted, and unconstitutionally applied by the civil court, the only course they ought to follow, *is to walk out of the Church*. That majority, however, knows its high duty to the Church and to the State better than to follow any such hasty counsels, however friendly may be the motives which dictate them. Being a very decided majority of the Church, they are entitled authoritatively to pronounce the present opinion and judgment of the Church; and it would ill become the Established Church of Scotland,—when she conceives that the unconstitutional proceedings of the civil court tend to destroy her public utility, and most injuriously to oppress her and ruin her Christian character,—if she did not respectfully urge upon the Legislature the necessity of instantly stepping in, to preserve her great and unquestionable usefulness in the country, and to defend her sacred and statutory privileges, by a wise interposition of the supreme power.

The Church, therefore, standing thus completely clear from every charge of hostility, or of the slightest disrespect towards the State, or towards any other party whatsoever,—it only remains that, before concluding, I revert briefly to *the great practical question* now before the country, viz. *how far it is proper and expedient that the measure requisite for the security and protection of the Church should be conceded by the Legislature?* And, in attempting to solve that question, I have little more to do than to explain somewhat more fully than I have yet had occasion to do, the true nature and bearing of that law of the Church to which it solicits the interposition of a legislative sanction.

With respect, then, to the *general principle of the non-intrusion of ministers*, which lies at the foundation of the whole

matter, it has been justly observed by a distinguished Judge *, that "it does not occur for the first time in the writings of the Reformers; *it was a fundamental principle in the Christian Church for more than a thousand years before Luther or Calvin or Knox was born.*" His Lordship might have added, that it was a principle coeval with the existence of the Christian Church. In the standards of our own Church it is oftentimes and solemnly announced, and distinct traces of it are to be found through the darkest ages, and amid all the grasping usurpations of the Papal priesthood. But the learned Judge goes on to observe, that while the principle was thus distinctly recognised, as fundamental, from the earliest period, it came, about the end of the fifth century, to be limited and explained by the Roman Pontiffs, and was gradually frittered down, by the subtlety and ambition of the priesthood, until *unanimous dissent* was held to be as good a *consent*, as any other. Still, however, it is to be particularly observed, that all this explaining and limiting of this fundamental principle of the Church was the work *of the Church itself;* and if the Church of Scotland,—invested as she is by the State with supreme and exclusive authority in spiritual matters,—considers that the perversion and jugglery, safely practised in the depths of papal darkness and superstition, may naturally shock the understanding, and rouse the indignation of a Protestant people, in the present day, and that it has now therefore become right and expedient to expound and give effect to this fundamental law of the Christian Church, in a way that will make it at least not entirely repugnant to reason, and to the spirit and character of all other existing institutions,—the Church in so doing,—cannot be considered as transgressing her legitimate sphere, or as

* Lord Corehouse's Speech; Robertson's Report, vol. ii. p. 220.

proceeding upon views that are, in any degree, visionary or extravagant *.

But *what is the meaning* of this *fundamental law*, as held by the Church of Scotland? Does it not mean, that what are called "*the Christian people*" are entitled peremptorily to reject any man proposed to be their minister;—and that this being a "*divine right*" inherent in the people, the Church is bound, in all circumstances, to give effect to their rejection,—however absurd, or however base may have been the motives which dictated it? Such has been represented to be the meaning of this law, and such in many quarters is, to this hour, believed to be its only meaning. And this notion of "*a divine right*," to this effect, in "*the Christian people*," is so obnoxious to the minds of many,—as it is, I confess, to my own,—on the ground of its total repugnance to every correct view either of human society, or

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* The following letter affords an interesting example of the mode in which a Protestant *Bishop*, (a man whose praise is still in all the Churches,) thought it right to interpret this fundamental law of the Christian Church, when dealing with the intelligent population of a Scottish parish, considerably upwards of a century and a-half ago. It was addressed by Archbishop Leighton to the heritors of the parish of Straiton, Ayrshire.

"Worthy Gentlemen and Friends,

"Being informed that it is my duty to present a person fit for the charge of the ministry, now vacant among you, I have thought of one whose integrity and piety I am so fully persuaded of, that I dare confidently to recommend him to you, as one who, if the hand of God do bind that work upon him amongst you, is likely, through the blessing of the same hand, to be serviceable to the binding up of your souls heavenwards; but is as far from suffering himself to be obtruded, as I am from obtruding any upon you. So that, unless you invite him to preach, and, after hearing him, declare your consent and desire towards his embracing of the call, you may be secure from the trouble of hearing any farther concerning him, either from himself or me; and if you please to let me know your mind, your reasonable satisfaction shall be to my utmost power endeavoured by your affectionate friend and humble servant,

"R. Leighton."

of Christian principle, or of Church polity;—(including pre-eminently the *Presbyterian,*)—that it is not to be wondered at, that those who conceive all this to be involved in the fundamental principle of non-intrusion, should feel strongly, and say positively, that, however much they may agree in the reasonableness, at the present time, of introducing some proper check upon the exercise of lay patronage,—they cannot, by any possibility, bring their minds to sanction a law, involving principles so utterly monstrous. In the present state of the controversy, I believe nothing would tend so much to reconcile men's minds to the Church, and to convert the great mass of her decided opponents into her cordial supporters, as to show that the principle of non-intrusion, in its own nature, and as held by the Church of Scotland, *does not afford the slightest countenance to the obnoxious doctrines to which I have referred;* and this happily may be done, to the satisfaction of every man, in little more than a single sentence.

The law, or the "*principle*" of non-intrusion, as it is styled in the solemn resolution of last General Assembly, is there said to be a "principle, *coeval with the Reformed Church* "*of Scotland, embodied in its standards,* and *declared in various* "*acts of Assembly.*" The resolution of Assembly pledged the Church to an adherence *to this general law or* "*principle,*"—whatever might be included in it;—but, (as already explained,) the resolution did *not* pledge the Church to adhere to the *veto* law, *nor* did it, in any way, expound what the Church means by her general principle of non-intrusion,—but referred simply to "*the standards of the Church*" and "*various acts of Assembly,*" for information in regard to that point. Now, the shortest, as well as the most satisfactory and conclusive, way, of ascertaining what the records of the Church *prove* to be the meaning attached by the Church of Scotland to this law, is to look, at once, to the mode in

which *the Church herself gave effect to this her fundamental law, on those occasions, when she had the whole matter of the settlement of ministers placed at her own disposal.*

Various occasions might be selected with this view; and of these I select two: In 1649 then,—the period of what is called the Second Reformation, always referred to as the purest in the whole annals of the Church of Scotland —the Church, having the settlement of ministers absolutely in her own hands, arranged the matter thus *: The election or nomination was given to the *Kirk-session;* and, "if it hap- "pen that *the major part* of the *congregation* dissent from the "person agreed upon by the Session, in that case, the mat- "ter shall *be brought unto the Presbytery, who shall judge of* "*the same;* and if they do not find their dissent to be "grounded upon causeless prejudices, they are to appoint a "new election in manner above mentioned; but, if *a lesser* "*part* of the Session or congregation show their dissent from "the election, without exception relevant, and verified to "the Presbytery, notwithstanding thereof, the Presbytery "shall go on to the trials and ordination of the person elected; "yet all possible diligence and tenderness must be used to "bring all persons to an harmonious agreement." In this arrangement, in many respects highly admirable, there is *a most explicit exclusion* of the notion of any thing like "a di- "vine right of rejection" inherent in the people.

So, in like manner, at the Revolution, when the matter was fixed by Parliament, with the full concurrence of the Church,—the election was given to the heritors *(i. e.* the landed proprietors) of the parish, and the Kirk-session, conjointly; and the privileges of *the people* were thought legitimately protected by the following simple provision, viz. that

* Peterkin's Compendium, vol. ii. p. 69.

" the disapprovers give in *their reasons* to the effect the affair " *may be cognosced upon by the Presbytery of the bounds, at* " *whose judgment, and by whose determination the calling and* " *entry of a particular minister is to be ordered and concluded.*"

I do not detain my readers by referring to other occasions of a similar nature, simply because these two are decisive, and are utterly subversive of the notion that the *divine right of the people* is that which forms the fundamental law, or principle, of non-intrusion, justly said to pervade the whole standards and history of the Church of Scotland. The truth is, that the law or principle of *non-intrusion*, so steadily kept in view by the Church of Scotland, is just another name for that ancient and general principle already alluded to—that *the reasonable consent* of the congregation is a proper prerequisite to the constitution of the pastoral office; and, as to the method of ascertaining, under control of the Church authorities, the reasonableness or unreasonableness of dissentients, that has been variously provided for by the Church, at different periods, according to circumstances. This then, and this only, is the principle of non-intrusion now asserted by the Church of Scotland. Lord Moncreiff, who moved the *veto* law in 1834,—Dr Chalmers, who has not been second to him in promoting their common object,—with *the great mass* of their supporters—in the proportion of *more than five to one—are as firmly and heartily opposed to* " *the divine right* " of the *Christian people*," *as are any men in the country:*— and all that was finally resolved by the solemn vote of last General Assembly having been, that an adherence to the ancient principle of *non-intrusion*, or of requiring *the reasonable* consent of the people in the settlement of their ministers, and the giving fair and honest effect to that principle, in one shape or another, is now required upon grounds both of principle and of the strongest possible expediency,—I ask, are

many of the present opponents of the Church,—may I say *most* of them,—disposed to concur with the Church in the propriety of such a view? Let them support the Church in *this*, and they *and the Church are at one*.

But, did not the *veto* law involve a recognition of "the divine right of the people," and give practical effect to that right, in the most unequivocal manner? I answer,—*nothing was farther from the contemplation of those who proposed and passed the VETO law, than the giving the remotest countenance to such a doctrine*. In the year immediately preceding that in which the *veto* law was carried, the individuals who passed it, gave their support to a motion *which distinctly recognised the control of the Presbytery in every case;* and the reasons which induced them, in 1834, to throw this aside, were reasons not of principle, but of mere expediency, such as the following. It was thought that if the reasonableness of the dissent, tendered by a majority of the congregation, were to be judged of by the Presbytery,—the discussions which might ensue before the Presbyteries, the Synods and the General Assembly, touching such points as the piety, the zeal, or the discretion of proposed ministers, might lead to tedious discussions, and perhaps not very satisfactory decisions;—while the decisions,—in whatever way given,—might often expose the Church courts to reflections—the occasions of which it was thought very desirable to avoid. It was seen distinctly that the peremptory right of rejection might, no doubt, be occasionally abused; but it was considered, on the whole, better to run that risk, than to incur the inconveniences of another kind to which I have just alluded *. These views will not

* An objection, of *an ecclesiastical nature*, has been stated to the *veto* law, which seems obviously fallacious. It is said, that by allowing the people to put

be considered trivial by those who have had most to do in the business of life. But while these views prevailed, at the time, so far as to carry the enactment, in the shape of the *veto*, many then entertained great doubts, in regard to the matter; and these doubts, I have reason to believe, have since become stronger and more general. Whatever may prove to be the ultimate opinion of the Church, and of the country, regarding it, the Church is desirous and anxious that the subject should now be considered as perfectly open for deliberation,—in order that it may be finally arranged in whatever way may be judged most advantageous. The necessarily short time allowed for consideration before last Assembly, rendered it altogether impossible for the Church, on that occasion, to propose, far less to adopt, any new arrangement;—even if

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a negative on the patron's nomination,—the Presbytery transfers its proper duty, of trying the candidate's qualifications, from itself to the people. Now, if the *nomination* or *election* of the minister were asserted to be inherent in the Presbytery, the giving to the people a negative on its nomination would no doubt be an encroachment on the Presbytery's power; but, if once the election is put entirely out of the hands of the Presbytery, as it necessarily is by the existence of patronage,—what does it signify to the Presbytery's duty, to try all entrants before admission to the ministry, whether the Patron's right to nominate is absolute, or qualified—whether the individual ultimately placed before the Presbytery for trial, has been selected by a patron alone, or by a patron, with any machinery of negative, or of concurrence, on the part of others, which may be conceived, and which, in itself, may either be more or less expedient than the Patron's unrestricted choice? The individual *finally* indicated to the Presbytery for trial, by any one of such processes, must still undergo his trials, *precisely in the same way, and to the same effect, as if he had been indicated by any other of the processes.* Some of the patronages in Scotland are vested in the whole heritors of the parishes, forming a body of several hundred individuals. Suppose, that in the deed settling the right upon the heritors, in one of these parishes, it were provided that *one* of their number was to have the right of *selecting* the minister, and that the majority of the rest were to have a negative on his choice; would that infringe on the Presbytery's privilege to try? And what difference would it make upon the Presbytery's privilege, if the right to negative were given to the heads of families, or to the whole population?

it could then have been finally determined that a new arrangement was desirable. But the interests of the Church and of the country, in the matter, are in fact identical; and if those who are fairly entitled to be heard or consulted, will only take up the subject, with ordinary attention and calmness, nothing will be easier than to form an arrangement perfectly satisfactory to all parties.

Such being the actual state of the question, it is scarcely necessary at present to advert, more particularly, to the merits of the *veto* law,—which has necessarily been made the object of much hostile and unmerited remark. I may observe, however, that that law has now continued in operation for a period of five years; and notwithstanding any defect that may belong to it, and in spite of all the disadvantages under which a new system must ever labour at the outset, I find, on inquiry, that in 150 settlements which have taken place under it during the above period, there have been only *ten* cases which have given rise to any sort of discussion before the Church courts; and I am informed by some of the professional gentlemen, who have had most opportunity to watch its practical working, that they entertain no doubt that, even as it stands, the law would be found to operate with general success and satisfaction *.

It will be at once obvious, that the mode in which the system must work practically is, *not* by the *veto* (or any other form of the call) constantly putting a negative upon appointments actually made by the patron, but by inducing the patron not to make any appointment but such as he

* For an exposure of the extraordinary misrepresentations, on this subject, which have been furnished to the Dean of Faculty, I must refer to Mr Dunlop's "Answer," and other works, containing ample details,—into which the design of this publication forbids me to enter.

has reason to think will not be effectually opposed. This, as it was designed to be, is no doubt a restriction upon the patron's indiscriminate choice: but, viewing the matter on general and public grounds, is this to be considered as any material evil, or not rather as a positive and considerable benefit? The patron will certainly not have it so often in his power as heretofore, to present any individual whom convenience, or interest, or private solicitation might suggest to or force upon him; but it is the greatest possible mistake to say, that the patron has been mocked by the Church, and that by her law, he is deprived of all power, and reduced to a mere cypher in the minister's appointment. The *nomination still rests with him, and with him alone;* and he has a great deal more to say in the appointment than the whole of the parish put together. *No man can ever be appointed, if the patron does not choose to nominate him; and he can therefore absolutely exclude any individual, or even any class of individuals, that he thinks proper.* By obstinately holding out, it is the parish that suffers, from wanting a minister, infinitely more than the patron; and they have no means of *compelling* him to *come into their views.* This decisive power, placed in the hands of patrons, is of the highest public importance, and, by the great body of the Church, is considered to be of the most salutary effect, in guarding the appointment of her ministers from that popular canvassing, and those insidious influences which, under a different system, might have a tendency in some measure to corrupt its purity. While, therefore, the patron's exclusive right of nomination seems to furnish the most effectual preservative against the evils of a too popular system, the negative of the people, on the other hand, —more especially if placed under the salutary control of the Presbytery,—seems to afford a most reasonable check against the rash and inconsiderate exercise of the patron's power;

and the whole system, estimated in its general tendency and operation—the only way to estimate the value of any practical system—seems to be characterised by moderation and practical utility.

With regard to the objection which has been thrown out in a certain high quarter, that the people will no doubt be ever ready to put their negative upon the man whose religious and moral standard appears inconveniently high for their vices and frailties, and therefore to reject the man whom they most require,—it is enough to say, that the objection is founded on a total ignorance of the religious character and sentiments of the people of Scotland. Looking to their pastor,—as the respectable portion of the people of Scotland habitually do,—as a friend and counsellor in the most important events of life,—as their comforter in sickness and at death, and as he whose special duty it is to instil the principles of piety and virtue into the minds of their offspring,—the highest tone of religion and morals will ever be felt by them, to constitute in him the strongest recommendation which he can possibly possess. No one such instance, as has been supposed, I venture to assert, ever did occur; and were it possible to conceive that it should, the very first duty of the Church, in such circumstances, would necessarily be, to support the hands of the patron, and to put down the unworthy and scandalous opposition.

But as I had occasion to hint at the outset, the reasons which have induced the Church to adopt and to abide by the law of non-intrusion, and which recommend that that law, in some convenient form, should now be sanctioned by the Legislature, are founded not merely on the propriety and reasonableness of the measure, viewed in itself,—but upon

considerations of a much more urgent character, arising out of the past history and the present position of the Established Church in the country. The baneful effects of unrestricted patronage upon the efficiency of the Church of Scotland, are not, unfortunately, matter of speculation, but of positive fact, most legibly engraven on the history of the Church, during the last hundred years. The great body of the respectable and influential Dissenters in Scotland, (with a few exceptions which it is immaterial to specify,) *have been driven out of the Church, with the utmost pain and reluctance on their part, by the exercise of unrestricted patronage.* The congregations, belonging to this class of Dissenters alone, amounted in number, at the date of the *veto* law, to more than one-half of the total parishes in Scotland; while, at the same time, the existence of patronage had engendered, within the Church itself, a wide-spread disaffection and alienation among multitudes, who still continuing to linger within her pale, were ready, on the first provocation, to join the ranks of her enemies. From among the class of Dissenters now alluded to, have been formed by far the most formidable enemies with whom the Church has had to contend, in the recent struggles for its existence. One body, however, of these Dissenters, consisting of nearly forty congregations, were so favourably impressed by the passing of the *veto* law in 1834, that they immediately opened a negotiation with the Church; and by a vote of last General Assembly, they were, without one dissentient voice, again reincorporated with the Establishment *. Another highly respectable body of these Dissenters, viz. that of which the late celebrated Dr M'Crie formed a distinguished member,

* The extraordinary mistake, in regard to this matter, into which the Dean of Faculty has fallen, is explained in the Appendix.

are at this moment watching the fate of the Church, in this matter, with an interest as cordial as is felt by any member of the Church itself. And though the heats of the Voluntary contest are still too violent to admit of any general expression of feeling on the part of the large body of Seceders,—yet I know, from direct and most unexceptionable authority, that there still remains, deeply seated in the breasts of the great mass of them, a lingering attachment to the Church of their fathers, and a fond pride in cherishing the hope of her rising prosperity. Were the Church of Scotland—engaged as she now is with the magnanimous purpose of spreading religion and intelligence throughout the land—only not prevented from, legitimately and seasonably, modifying that which she has too long allowed to operate as her deadly bane,—and were she thus placed in a situation to merit the confidence of those who have been made her greatest enemies,—she would soon exhibit an example of national union, order, and public virtue,—such as the world has probably never witnessed, —and upon which an approving Government might smile with unmingled satisfaction.

Had the Church not seasonably conceded the *veto* law, or some other reasonable restriction upon patronage, in 1834, so as at once to re-attach her own members, and to disarm her opponents,—the result of the struggle, which has since taken place, might have been very different from what it has proved; and were unrestricted patronage to be now again rivetted down upon the Church, under the existing statute, as recently expounded, and to be enforced by decrees of the civil court, and by the executorials of the law, directed against the most sacred functions of the ministry,—the fate of the Church of Scotland may be considered as sealed for ever. The majority of the Church, who have been in-

discreetly told to violate their most obvious duty to the Church and the country, by deserting the Church at the very moment when she most needs their assistance, is not only a very decided numerical majority of the Church, but I venture to say—without disparagement to any,—that their numerical strength gives a very faint conception of the relative weight and influence which is exercised by them, throughout both the Church and Kingdom of Scotland;—and if they were, under existing circumstances, to follow the advice which has been so unadvisedly tendered to them,—I leave it to every candid man to consider,—what prospect either of usefulness or of stability would remain to the Church which they left behind them.

If the existing law relative to patronage is not to be now explained or modified, and if, in consequence, unrestricted patronage is to be re-imposed on the Church, in the manner and under the circumstances which I have described—it is impossible to doubt that the Church of Scotland will receive a shock, the effects of which no man who loves either the Church or the Country can possibly contemplate without the utmost alarm. Then I ask, *Cui bono?* For what purpose, object, or conceivable end is it that you will thus endanger, if not utterly destroy, the most useful and efficient Church that exists in Christendom? That Church having in some measure lost her strong and ancient hold upon the country—mainly in consequence of the existence of unrestricted patronage—is at the present moment engaged, by the most patriotic and successful exertions, in regaining her lost ground, and re-establishing her invaluable influence over the intelligence and moral character of the people—more especially of those large masses of the population, which, politically as well as otherwise, have now become of such prodigious public

importance. The Church finds this law of patronage obstructing the success of her exertions,—and proposes a reasonable modification, instead of a total abolition of it. Why should you hesitate to grant what the Church so reasonably asks? Why, instead of clinging to that which has all along been the great, if not the only means of weakening and impairing your Established Church, and which is obviously now the source of greater weakness and more imminent danger than ever,—Why should you not rather be anxious to be rid of it, and grateful to the Church, for the timely suggestion of a temperate remedy? Why should you not be ready and forward, to encourage and reward the faithful and devoted exertions of your Church, by conceding to her, if that were necessary, any thing, even though of doubtful expediency, if it were at all within the bounds of reason or moderation? And, why then, for one moment, hesitate to grant a measure so clearly prescribed to you by urgent necessity?

If you throw off your Established Church, or a large mass of it, to the Dissenters,—will you thereby deprive them of any part of that spiritual, or non-secular, power, which so many now affect to look upon with groundless fear? On the contrary, must you not then leave them to exercise, as the whole of the violent Voluntaries and agitators at present actually do,—the *entire and unrestricted* powers, which in a *most restricted form* you pretend to dread within the Establishment itself? And will it be, in any respect, more for your interest, that these powers should be exercised, unrestricted, by men thrown off from all connection with the State, than that they should be exercised, in a modified form, by men composing your own Established Church,—swayed and influenced, as they must be, by a sense of dependence and interest, and by all those respectable feelings which public and official station will seldom fail to inspire?

If you grant the measure now imperatively required, you are, after all, only leaving the Church free and unfettered scope, to benefit you,—by the prosecution of plans which promise to realise advantages to the country, greater than, I venture to say, were ever yet realised for any country under Heaven. If you refuse the requisite measure,—I know not what you are to gain by the refusal;—but the loss to you of the Church of Scotland, will be a loss which you will in vain seek to repair.

If the position of the Church has been satisfactorily vindicated, or if what the interests of the Church and of the country, at the present moment, alike require, has been made obvious and unquestionable, *I do beseech every man to reflect, that the present is no time for neutrality or indifference. With active exertion and hearty co-operation*, there can be no difficulty in obtaining all that is needed to tranquillise the country, and insure the stability and increased usefulness of the Church. But if the indispensable measure is not now obtained, the country is forthwith plunged into distraction; and the issue,—upon the interests of Scotland and of the united empire,—who can pretend to tell!

It has been alleged that some jealousy of the principles of the Church of Scotland exists in England; and that there is a disinclination there to enter into the measure now required, as it might suggest troublesome innovations in that part of the empire. If there were any ground to apprehend such consequences from granting the measure now required for Scotland, it would be enough to answer, that any risk, of such remote and contingent inconveniences, is infinitely more than counterbalanced, by the positive and imminent hazards that must arise to England, from a refusal to grant the measure; for if,—by that refusal, you destroy the strongest religious establishment in the three kingdoms,—how are you thereafter

to maintain the Established Church in Ireland or in England? But, in truth, the jealousy referred to is altogether groundless. The Church of England rests upon its own principles, which are incorporated with the history of the country, and are congenial to the sentiments and habits of its people. These principles are capable of defence, and have been defended by some of the most able and judicious men that England has ever produced. It is therefore, in every point of view, fit and proper that the approved principles of the Church of England should be applied in England; but, for the self same reasons, it is equally fit and necessary that, in Scotland, the principles which are to guide the conduct of the Government, should be the inherent principles of the Church of Scotland. To apply the principles of the one Church in the government of the other, can be attended with nothing but confusion and ruin to both; and,—as to any attempt on the part of the Scottish Church, to transplant her principles from Scotland, where they are inherent and indestructible, into England, where they are exotic and distasteful,—we made such an attempt once,—and only once,—and the measure of success which we met with was not such as to invite a repetition of the experiment.

In conclusion, I must just observe, that of all the circumstances connected with the history of this whole question, there is none more sincerely to be deplored, than that events have so unfortunately occurred in regard to it, as to have the effect of placing a considerable portion of those who are of Conservative politics, in the most disadvantageous and unnatural of all positions, viz. that of temporary or apparent hostility to the Established Church of Scotland. The writer of these pages,—himself a Conservative, from the deepest conviction,—hesitates not to affirm, that the Established Church

of Scotland forms, at the present moment, and prospectively, by far the strongest bulwark of Conservatism in the United Kingdom; and if the above observations should prove in any degree instrumental, in removing misapprehensions from the minds of Conservatives, and leading them to assume that position, in relation to this question, which their character and their policy alike require of them, he will consider—not only that he has benefited the Church,—but that he has done the most essential service to that party on which all his hopes of good government depend.

APPENDIX.

The following Letter appeared in a highly respectable Newspaper, of the most extensive circulation in Edinburgh, (the Evening Courant,) on the 21st November last, and from thence was transferred into various provincial papers—Conservative and others, in the country.

The Dean of Faculty and Mr Dunlop.

To the Editor of the Evening Courant.

Sir,

The Dean of Faculty's "Letter to the Lord Chancellor" has now been before the public for a considerable time; and, coming from the highly respectable leader and adviser of the whole course of opposition which has been made, and is still maintained, against the recent proceedings of the Church, it must be entitled to every possible consideration. A full "Answer" to that letter has just been published by Mr Dunlop—a gentleman who, from his ample knowledge of the subject, and the active part he has taken in the conduct of Church affairs, must be considered not less qualified to present us with an authentic statement of the grounds on which the Church rests the vindication of its proceedings. As the Dean of Faculty has intimated that he is not to prolong the controversy, the public, having thus before it a full statement from each of the opposing parties, ought now to be in a situation to draw some definite conclusions respecting the real character of the Church's

proceedings. As you have opened your columns very fully to the treatment of this subject, (in which the public possesses so vital an interest,) I trust you will afford me an opportunity of stating, as briefly as I can—and with reference to one most important branch of the controversy—some material conclusions, which appear to me to be necessarily deducible from the materials furnished by the two opposing statements to which I have referred. And if any of your readers should have been led to form different conclusions, I shall be happy to be made acquainted with their views, and to meet them in a spirit of candour and respect.

The main object of the Dean of Faculty's "Letter" is to evince to the public, that the Church has, of late years, embarked in a scheme of "*usurpation*" and "*Ecclesiastical tyranny*," and that it is advancing by "*rapid strides*" towards a grasping ascendancy and an "*overbearing assumption of superiority over all other authority.*" And in order to establish the existence of this alarming scheme on the part of the Church, the Dean refers to various *other* acts of the Church, besides its proceedings in relation to the veto act. It is to this view, so prominently held up and urged by the Dean of Faculty, that I wish at present to draw the attention of your readers. The following are the leading acts of the Church upon which the Dean founds, and the answers which Mr Dunlop makes in regard to each of them respectively.

I. In the *first* place—while the Church (the ruling majority of it) are now only contending for the veto law, or some such practical restriction on the abuse of patronage, the Dean alleges, that the real and ultimate object of the Church is *the total abolition of patronage*, which (he says) the *avowed* principles and objects of the ruling majority require them to attain. In support of this position, he states it *as a fact*, that "*most* of the members of Dr Chalmers' Committee (the Committee appointed by the Assembly to negociate with Government on the veto law) are *active members of the Anti-Patronage Society*, and *avowedly* and *decidedly* opposed *in principle* to *any* system of patronage." Now, what

is the answer?—Mr Dunlop states, that of *the twenty-one* individuals composing Dr Chalmers' Committee, only *four* entertain anti-patronage opinions, to any extent, and there is only *one solitary individual*, viz. himself, *who is a member of the Anti-Patronage Society!* If we take the sentiments of Dr Chalmers' Committee, therefore, as representing the sentiments of the Assembly which appointed it, we find that the Church stands divided *more than five to one* IN FAVOUR *of the existence of patronage*; which conclusion tallies very nearly with the result to be deduced from two testing divisions which occurred in the course of last Assembly (as mentioned by Mr Dunlop)—for while 204 voted for Dr Chalmers' motion, *i. e.* for a restriction on the use of patronage, only 40 voted for the rejection of Mr Gladstone's church, which involved a direct recognition of patronage. The originators of the veto law, (Lord Moncreiff, Dr Chalmers, &c.) according to their "avowed" and *solemnly recorded* opinions, are, in fact, as *decidedly and earnestly opposed to the abolition of patronage as the Dean himself can possibly be*; and the same is the case with the great mass of their supporters—the expressed design and *purpose* of introducing and maintaining the veto law being precisely *the reverse* of that stated by the Dean, viz. *to stop the clamour for the abolition of patronage*, and to *preclude all hazard of such a measure being in future attempted.*

My conclusion, on *this* head, therefore is, that the allegation that the Church is grasping at power, by aiming at the abolition of patronage, is a *total mistake*; the foundation of the allegation being annihilated, and *the contrary* being clearly established to be *the object* of the Church.

II. The Dean farther founds a very heavy charge against the Church, on two of its acts, which are precisely analogous to each other in their nature, viz. the act of 1833, assigning *quoad sacra* parishes to the Parliamentary ministers in the Highlands, and a similar act passed in 1834, respecting the ministers of Chapels and the Church Extension Churches. Of the former act, the Dean

says, that it is "*a very remarkable instance* of the *systematic disregard of all the limits of civil and ecclesiastical jurisdictions, which has been exhibited of late years in the proceedings of the Church of Scotland;*" and the latter he characterises as a "*most unconstitutional and unexampled proceeding*," and as "*a palpable and extraordinary assumption of power.*" Now, observe the answer;—Mr Dunlop states, that the act of 1833 (admitting the ministers of the Parliamentary churches) was brought forward and moved in the Assembly, by *Dr Cook,—the acknowledged Leader of the party to which the Dean belongs*, and whose "enlightened and admirable policy" he everywhere extols. *The Dean himself was a member of that Assembly*, which *unanimously* passed the act, with only *one* dissentient voice—and that *not* the voice of the Dean of Faculty, but of *an Aberdeenshire minister!* Mr Dunlop states farther, that, in treating of this Act of Assembly, so lately as 1836, *the Lord President of the Court of Session* expressed *his* opinion of its legality in these terms. After mentioning that the Assembly "had enacted that these" ministers shall exercise and enjoy *the whole* "*powers and privileges now competent to parish ministers of this Church*," his Lordship added, "and *this was a matter within* THE PROPER PROVINCE *of the Assembly.* THEY HAD POWER TO PASS SUCH AN ACT, and they exercised that power." "The Assembly made no disjunction of parishes *quoad civilia*, but it declared the 'ministers to be members of all Church courts,' &c., AND THAT THE ASSEMBLY ALONE COULD DO." And, in regard to the act of 1834, Mr Dunlop states, that by AN ACT OF PARLIAMENT passed contemporaneously with the act of Assembly, (4th and 5th Wm. IV. c. 14,) the erection of parishes "*quoad spiritualia, by authority of the Church courts of the Established Church of Scotland*," and "*the said Church courts erecting such new parishes into separate spiritual jurisdictions*," *is expressly recognised and sanctioned, by the Legislature;* while another act of Parliament as distinctly recognises and sanctions the erection of the Parlia-

mentary churches, previously approved of, as perfectly legal, by the Lord President.

My conclusion on *this* head, therefore, is, that the charges of "illegality," and of "palpable and unconstitutional assumption of power" on the part of the Church, in respect of these two acts, is founded on the most *unaccountable and total obliviousness* on the part of the Learned Dean, and that the charges have not *a shadow of ground to rest upon.*

III. But farther,—and still in relation to the two acts of Assembly just mentioned,—the Dean not only objects (as has been seen) most unaccountably, to their being constitutional, but he says that they form an "interference with the rights and interests of the subjects of the kingdom," in respect that by them, "the parishioners are subjected to the discipline of the new minister," and withdrawn from that of their original parish minister. This leads Mr Dunlop, in answer, to state the *real* and *most substantial* objects which the Church had in view, in erecting these *quoad sacra* parishes. Mr Dunlop states, that, during a period in which the population of Scotland *had doubled,* the Church had only added about *sixty chapels* to the Establishment—while the Seceders alone (independently of other Dissenters) had formed *upwards of* 500 *congregations, without the pale of the Church ;*—that the erection of chapels was a most ineffective and incomplete mode of extending the Establishment, in as much as a chapel minister has *no Kirk-Session,* and *no discipline* over his flock ; and that, in order therefore to realise the great and *peculiar* benefits of an Establishment—as these had been so triumphantly demonstrated, before the Princes and Nobles of the land, by the most distinguished ornament of our Church—it was *indispensable* that the Church should assign *a distinct parish* to every minister, arm him with the power of discipline, and surround him with his Kirk-Session. And, as a specimen of the results which have followed from this policy, Mr Dunlop states, that the parish of St Cuthberts, Edinburgh, with its 70,000 inhabitants, which, in 1834, had

only *one* Kirk-Session, with *two* parish ministers and three assistant chapel ministers, has now *ten* Kirk-Sessions, and *eleven* parish ministers; and that the Barony parish, Glasgow, with its 77,000 inhabitants, which, in 1834, had only *one* Kirk-Session and *one* parish minister, with three assistant ministers, has now *fifteen* Kirk-Sessions and *fifteen* parish ministers. My conclusion on *this* head, therefore, is, that "the interference" of the Church in this matter has been vastly to *enhance* the "rights and interests of the subjects of this kingdom;" and that the State, and the public at large, have been laid under *infinite obligations* to the Church, and to the *wisdom*, not less than the zeal, with which it has prosecuted its most Christian and patriotic exertions.

IV. The only remaining point to which it is necessary to refer, regards the act of last Assembly, re-admitting a certain body of Seceders into the bosom of the Church. The Dean objects, that the Church by this act made an improper capitulation, and he quotes at great length documents to show the dangerous and alarming terms on which that capitulation proceeded.

The answer is—that the document on which the Dean founds, and *which he quotes at such length*, instead of being the document, embodying the terms on which the class of Seceders in question *agreed to re-unite with the* Church, is a document, setting forth the grounds on which an *entirely different* body of Seceders, *refused to re-unite with the Church;* and *on which they still continue a separate and excluded body.* My conclusion on *this* head does not require to be stated.

And here I must stop—drawing, from the whole, this *general conclusion*, that, so far as the Dean of Faculty's imputation against the Church, of a scheme or conspiracy to establish "an ecclesiastical tyranny," and a usurped dominion over the liberties of the country, is based upon proceedings of the Church, foreign to the veto law—Mr Dunlop has demonstrated the allegation, and all the energetic appeals grounded upon it, to be *utterly without foundation.* Had it been otherwise, nothing would have been

more just than the Dean of Faculty's conclusion, that the public ought instantly to meet and put down the atrocious conspiracy, which he had unveiled. But, since the facts, founded on by the Dean, do not afford *a shadow of countenance* to his extraordinary theory, it becomes manifest that the Dean's zeal for a party, and his vehement ardour as a counsel, (by which he is so honourably distinguished,) have wholly incapacitated him, for forming a dispassionate judgment for himself, and still more, for acting as a guide of public opinion, on this momentous question.

I remain, &c.

Another Letter followed, on the 5th December,—the first paragraph of which was in these terms :

Sir,—I have delayed thus long sending the present letter, in order to afford full time for ascertaining, whether any of your readers saw grounds for dissenting, from the important conclusions, which were stated in my former communication. And, since these conclusions appear to have met with universal acquiescence, I now dismiss them, with one inference, which is of great practical moment, viz.—that since the Dean of Faculty has himself demonstrated, by his pamphlet, that, from the unfavourable circumstances of his position, he is entirely disqualified for forming a fair and dispassionate judgment on this all-important subject; and since it is, in this state of mind, that he has incited, advised, and conducted, up to the present hour, the whole course of opposition against the Church,—the public cannot be too much on its guard, lest it be drawn, unawares, into a concurrence with a set of measures, which have such an origin, and which a little cool reflection may show, to be replete with danger and ruin, to the best interests of the country.

*** Edinburgh, 26*th Dec.* 1839. *No answer has ever been made, to either of these Letters.*

No. II.

THE CALL.

The following are the terms of *the Call*, as immemorially used in the procedure of the Church of Scotland;—the Heritors and Elders, however, having been introduced, as Callers, only since the date of the act 1690, viz.

"We, the Heritors, Elders, Heads of Families, and Parishioners of the "parish of ————, within the bounds of the Presbytery of ———— "and county of ————, taking into our consideration the present desti- "tute state of the said parish, through the want of a Gospel ministry "among us, occasioned by the death of our late pastor, the Rev.————, "and being satisfied with the learning, abilities, and other good qualifica- "tions of you, ————, preacher of the Gospel, and having heard you "preach to our satisfaction and edification, do hereby invite and call you, "the said ————, to take the charge and oversight of this parish, and "to come and labour among us in the work of the Gospel ministry, hereby "promising to you all due respect and encouragement in the Lord. We "likewise entreat the Reverend Presbytery of ———— to approve and "concur with this our most cordial call, and to use all proper means for "making the same effectual, by your ordination and settlement among us, "as soon as the steps necessary thereto will admit. In witness whereof, we "subscribe these presents, at the church of ————, on this the —— "day of ————, eighteen hundred and ———— years."

In the case of Mr Young, the Presentee of Auchterarder, the above very solemn Instrument was signed by *three* individuals,—one of them being the Land-steward of the Patron.

Printed by James Walker,
6, James's Court, Lawnmarket,
Edinburgh.